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MACROECONOMIC POLICY QUESTIONS: FINANCING OF DEVELOPMENT, INCLUDING NET TRANSFER OF RESOURCES BETWEEN DEVELOPING AND DEVELOPED COUNTRIES

Net transfer of resources between developing and developed countries

Report of the Secretary-General

I. INTRODUCTION

1. Two years ago, the General Assembly adopted resolution 49/93 of 19 December 1994 on the net flows and transfer of resources between developing countries and developed countries. The report of the Secretary-General to the Assembly at that session (see A/49/309) had concluded that a long-awaited shift had finally taken place in the net transfer of financial resources to the developing countries. The sum of all financing and investment income flows in and out of the developing countries plus the changes in their official reserve holdings, all taken together, had become a net inflow. This meant that the total value of imports of goods and services by the developing countries could become larger than the total value of their exports, the "net transfer" providing the financial resources to make the additional imports possible.

2. This was the kind of relationship that had once been typical, when net financial resources from abroad had boosted the spending capacity of developing countries above what could be purchased out of the value of domestic production, and where the foreign savings that underlay the net financial inflows supplemented domestic savings and raised investment. For almost all of the 1980s, however, exactly the reverse had been the experience: developing countries as a whole had transferred financial resources abroad on a net basis, exporting more than they imported and using the trade surplus to effect the transfer.

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3. An outward net transfer of resources by a developing country is not, per se, something to be decried, even if it is commonly called a "negative transfer". The "negative" comes from the convention in balance-of-payments accounting to show outward payments as negative numbers and inward receipts as positive ones. A negative transfer can be a reflection of economic strength, as when rapid rates of growth generate more domestic savings than the economy can absorb in new investment. The problem in most countries which had negative transfers in the 1980s is that it instead reflected the sudden discontinuance of private financial inflows in the face of large interest and repayment obligations from past inflows.

4. This is why a series of reports has been produced by the Secretary-General to monitor the net transfer issue, of which the present report is the sixth. The reports were set in motion after the call by the Economic and Social Council to the international community in July 1986 "to take appropriate and effective measures ... to halt and reverse the net transfer of resources from developing to developed countries" (Economic and Social Council resolution 1986/56 of 22 July 1986, para. 7). Half a decade later, the actual turnaround occurred.

5. When the General Assembly agreed, in resolution 49/93, to retain the review of the net transfer of resources on its agenda, the positive - and by 1993 quite large - net aggregate transfer was a new phenomenon. There was no certainty that it would be maintained. Moreover, it was clear that the swing from transfers that were negative to positive had affected only a limited number of countries. It was also clear that strong positive inflows arose mainly because there was a new interest in the international financial sector in placing funds in certain developing countries. Most other countries had yet to attract such funds. In addition, there were some worrisome signals concerning the prospects for the official financial flows upon which a large number of developing countries relied, especially official development assistance.

6. The General Assembly thus requested the Secretary-General to continue to monitor the financial flows and net transfers of the developing countries and report on them in the World Economic and Social Survey. 1/ The Assembly also requested the Secretary-General to report to the fifty-first session of the Assembly on the implementation of resolution 49/93, which included a comprehensive statement of domestic and international macroeconomic policy needs in developed and developing countries, as well as policy needs in the areas of international trade and finance. Developments in many of the relevant areas are the focus of other reports to the Assembly (especially the forthcoming reports on global financial integration: challenges and opportunities and the external debt crisis and development (A/51/294)), as well as the reports of international institutions that are to be taken as background documentation to the work of the Assembly (see resolution 50/227 of 1 July 1996, para. 32). The present report focuses on recent developments in the net flows and transfers to the developing countries and the particularly difficult situation facing the international community in the realm of official financial cooperation for development.

II. RECENT DEVELOPMENTS IN THE NET FINANCIAL TRANSFER TO DEVELOPING COUNTRIES

7. The main geographical dimensions of the net transfer of financial resources to the developing countries may be sketched quickly. In aggregate, there has been a large net transfer to the developing countries in every year since 1991 (see table 1). The very large transfer out of Latin America and the Caribbean in the 1980s reversed direction in 1992, although the net inflow was almost eliminated in 1995. Western Asia, once a source of financial transfers to the rest of the world, has been absorbing them for over a decade, albeit in declining amounts in recent years, as Governments undertook adjustment measures. The rest of Asia has alternated between supplying financial resources on a net basis and absorbing them, most recently the latter. The net transfer of Africa, which had been negative and positive in different years in the 1980s, has remained positive since 1993. Finally, the least developed countries, which are found in all main developing-country regions, have as a group continuously received a positive net transfer, albeit an amount that has grown rather slowly in dollar terms since the 1980s.

8. Of course, it is not the aggregate of developing countries that receives the net transfer but individual countries. Out of 93 developing countries for which rather detailed balance-of-payments and external debt data are available and that are thus monitored regularly, 21 had negative net transfers of financial resources over the period 1991-1994, despite the switch at the aggregate level to a positive net transfer. 2/ The country with the largest negative transfer in this period, averaging over $10 billion a year (almost 2 per cent of GDP), was Brazil (see table 2). The next largest negative transfer, that of China, was only one third as large and reflected very different circumstances (i.e., Brazil faced major external debt and domestic adjustment problems in this period, 3/ while China's experience reflected the rapid build-up of savings that accompanied its rapid economic growth).

9. In an earlier period, 1985-1990, when negative transfers were more prevalent, Brazil also had the largest negative transfer, also about $10 billion a year. In that period, 29 countries had made net transfers abroad. The second largest negative transfer, that of the Republic of Korea, was two thirds of the Brazilian transfer and represented very different circumstances than those which pertained in Brazil.

10. Finally, it is significant in fully appreciating the variety and relative magnitudes that underlay the aggregated data that three of the five countries with the largest negative net transfers in the 1985-1990 period were three of the five countries with the largest positive net transfers in 1991-1994, namely, Argentina, the Republic of Korea and Mexico. The shift between the two periods in these three countries alone represented more than $40 billion a year. Most countries have been far less affected than these three. Moreover, some of the new flows were unsustainably large; indeed both Argentina and Mexico experienced very steep declines in their net transfer in 1995.

Financial dimensions of the net transfers

11. The net transfer of financial resources of the 93-country sample was almost $40 billion in 1995. But when all the financial flows in and out of these countries are added together, including interest and other investment income payments, the net inflow - called the net transfer on a financial basis - was about $94 billion (see table 3).

12. Clearly, a very considerable volume of financial resources was made available to the developing countries in 1995, well over $50 billion of which was added to official reserve holdings instead of being used to expand imports. Indeed, accumulated reserve levels might now seem quite comfortable for many countries, based on such standard indicators as the number of months of imports that can be purchased from the reserve holdings. 4/ However, as the Mexican crisis demonstrated in 1994, large reserve holdings can be expended very rapidly when a country develops a high demand for imports and foreign financial inflows start to disappear. 5/ This notwithstanding, the accumulation of large levels of reserves helps to boost the confidence of foreign investors, although reserves do not substitute for appropriate macroeconomic policy, at least not indefinitely.

13. Regarding the recent composition of the financial flows themselves, several facts stand out (see tables 3 to 7). First, flows of foreign direct investment (FDI) have shown a steady and strong upward trend. This is mainly accounted for by the virtual explosion of FDI in Asia, particularly East Asia. Net FDI in Asia rose above $50 billion - four times the level of 1990 - and accounted for four fifths of the net flow of FDI to the 93 countries in 1995. As the growth of earnings remittances from direct investment naturally lags behind the surging growth in investment itself, the net financial transfer associated with direct investment has reached unprecedented, if temporary, levels. 6/

14. FDI to developing countries is attracted by an "investment climate characterized by growing markets and increasingly favourable regulatory frameworks, coupled with the general trend for firms from all countries to invest abroad in order to remain competitive internationally". 7/ In this regard, the strong direct investment flows to Asia seem to reflect the overall dynamism of the region. Direct investment flows to Latin America have also grown, although not nearly so strongly, reflecting the somewhat more fragile situation in several economies. At the same time, there has been no notable pick-up in flows to Africa as a whole and hardly any flows at all to sub-Saharan Africa.

15. The same group of countries which have attracted the bulk of FDI have also been the major users of medium and long-term private credit (primarily bank loans and bonds). Indeed, the combination of net repayments and debt write-offs of medium-term obligations to Africa's private creditors has exceeded new disbursements in every year since 1990.

16. International purchases of non-debt securities - i.e., portfolio equity flows, which are shares of stock purchased as a financial investment rather than as a direct investment - are not captured separately in the balance-of-payments data of many developing countries and are by default lumped together in the data

in tables 3 to 7 with short-term credit inflows and outflows. Data from other sources that have been assembled directly on equity flows, however, point to a continuing strong interest in the international financial sector in the purchase of developing-country stock issues. Even if the preliminary estimate of gross equity flows to developing countries in 1995 was less than half of what it was in 1993, it was still more than $20 billion. Almost two thirds of the latter amount entailed purchases of Asian securities and most of the rest was Latin American. 8/

17. It can thus be seen that the strong attraction of Asia to direct investors has been repeated in the international credit markets and in the international equity arena. Even though there are many factors which determine the attraction of a particular country as a location for direct investment, as a prospect for international borrowing, or as a location for the placement of funds in securities of one form or another, it seems that there is an interrelationship among the sources of flows. That is, it appears that corporations seeking to extend their international operations and portfolio managers seeking to diversify their holdings look to see where other types of investors are focusing their attention, as well as what other investors in their own financial sector are doing. Moreover, when all three types of flows are attracted to a country it is likely to be one that is having a sustained and substantial rate of economic growth, which is the soundest basis for the return of the profits and interest that the investors anticipate from their activities.

18. In addition, it has been observed that a significant shift in financial flows to one or two economically dominant countries in a region generates externalities (or the so-called contagion effects) for the smaller neighbouring countries. 9/ The re-entry of Chile and Mexico into international capital markets in 1990 seemed to make investors in developed countries more willing to place funds in other emerging markets in Latin America. By the same token, the balance-of-payments difficulties of Mexico and then Argentina in late 1994 and 1995 created negative sentiment among investors towards the region as a whole. On the other hand, investors have since seemed to differentiate more among emerging markets. For example, Brazil was reported to have attracted unprecedented levels of private inflows in the second half of 1995, while private capital continued to eschew other emerging Latin American markets. 10/

19. The ability of China and South and East Asian countries to attract increased amounts of long-term private credits in 1995 was another indication of an increased ability on the part of the investor to discriminate credit risk in different developing countries. Besides reduced private lending of this form to Latin America, the terms of new loans issued to Latin American borrowers toughened in 1995, in line with market perceptions of country risk, with widened yield spreads and shortened maturities. The flows of portfolio equity investment to Latin America also shrank sharply in 1995 while the decline in flows to South and East Asia was much more moderate.

20. In 1995, while investor confidence in Latin American economies was being rebuilt and while economic adjustment imperatives were cutting down import and net transfer levels, there was a surge in official flows. The total increase in net official credit flows was about $25 billion (see table 3). Virtually all of it was accounted for by the increased flow of official credit to Latin America,

which certainly helped to rebuild depleted reserve levels (see table 4). The Asian economies on the whole are making smaller demands on official sources of credit (see table 7). The very different degrees of access to international private financial resources among the three largest developing-country regions highlight the continued importance of official transfer in Africa. In spite of this, official credit flows to Africa have stagnated (see tables 5 and 6). Non-requited official grants to Africa, meanwhile, have declined (see tables 5 and 6).

21. In short, while the swift implementation of emergency packages following the Mexican crisis raised total official financing to developing countries, more traditional operations have shown a different trend. Indeed, the net transfer from the multilateral financial institutions to the developing countries has been negative in almost every year since 1987, the exceptions in 1990 and 1995 being the result of special financing in each case (see table 8). While the demand for concessional lending remains strong, the trend in non-concessional official lending reflects, at least in part, the fact that some middle-income developing countries with broad access to international financial markets can now raise funds on less cumbersome terms than those associated with lending from multilateral financial institutions. 11/

III. INTERNATIONAL POLICY CHALLENGES: OFFICIAL FINANCIAL COOPERATION

22. The relatively strong access, as noted above, to a variety of private sources of financing by several countries in Asia represents the cumulative effect of years of economic growth, structural adaptation and sustained macroeconomic policy efforts. However, it is indeed quite possible that some of the more successful countries could find themselves once again in a less advantageous situation. Policy-making for macroeconomic balance and economic development in a changeable global economy is a subtle art. As discussed in more detail in the aforementioned report on global financial integration, financial markets are not always accurate judges of economic policy needs and they can be fickle ones. The development process thus still requires a strong official international presence to assist in times of stress in individual countries and to address problems of a global nature that put development progress at risk.

23. This requires, in particular, a strong International Monetary Fund (IMF) with the capacity to stand behind its policy advice with sufficient financial support of adjusting countries. In this regard, it is noteworthy that three important sets of IMF financing discussions are advancing towards agreement. One is the expansion of contingency resources, namely, the General Arrangements to Borrow (GAB), upon which the Fund would be able to draw in event of need. Originally constituted as a pledge of mutual support by 11 major developed countries, an agreement on how to structure and operationalize an expanded GAB may be announced by the 1996 fall meetings of IMF and the World Bank. The second set of financial discussions involves increasing the Fund's own resources through the Eleventh General Review of Quotas. Preparatory work on this has been undertaken by the Executive Board of the International Monetary Fund, although agreement is not expected this year.

24. Agreement could be reached, however, on the third funding negotiation, that for the Enhanced Structural Adjustment Facility (ESAF). Until now, ESAF has been a temporary funding mechanism based on exceptional contributions that provided loans on highly concessional terms in support of adjustment programmes in low-income countries. The current ESAF commitment authority expires at the end of 1996. The Interim Committee of IMF has already declared its support for the ESAF as "the centrepiece of the IMF's strategy to help the low-income countries" and for "establishment of a self-sustained ESAF". 12/ ESAF is also expected to play a central financing role in the IMF component of the new multilateral debt initiative. 13/ Agreement on its future funding is thus essential.

25. ESAF operates with borrowed resources provided to IMF by member Governments and a subsidy account to reduce the interest rate on loans made using the ESAF funds. Resources for the subsidy account have been provided up until now as grants or concessional loans from interested members. The Managing Director of the International Monetary Fund suggested that about half the required subsidy resources might be generated by proceeds from the sale of a modest amount of IMF gold. The proposal involves the sale of up to 5 per cent of IMF gold reserves (which total over 103 million ounces). Gold reserves are carried in IMF accounts at a value of special drawing rights (SDR) 35 an ounce (about $50 at end June 1996), against much higher market prices (about $382 an ounce at the end of June). Sales of even small amounts of gold would thus produce large profits which could be deemed to accrue to the Fund. The interest income deriving from the investment of these profits could then be used to help finance the needed subsidy. The remaining resources would come from bilateral contributions, as before. Although there is not a consensus behind the proposal of a gold sale, discussions on it have continued. A decision on ESAF funding is expected by the IMF and World Bank annual meetings in the fall of 1996.

26. For most developing countries, the need for international official support goes beyond adjustment financing measures and is rather in the nature of traditional development cooperation. Most of those countries require such support on a highly concessional basis, i.e., as official development assistance (ODA).

27. In this regard, international attention must be focused on the preliminary estimates of aid flows by the Development Assistance Committee (DAC) of the Organisation for Economic Cooperation and Development (OECD). Member countries of the DAC have always been the largest source of ODA, but they have become the source of almost the entire aid flow since the economic situation deteriorated in certain major oil-exporting developing countries and in the European countries with economies in transition from central planning to market structures. Indeed, rising DAC aid flows in the 1980s tended to offset the declining flows from the other donor countries. However, according to OECD sources, DAC aid flows peaked in 1992, and with a 9.3 per cent drop in 1995 they have now fallen 13.5 per cent below that peak, measured in constant prices and exchange rates.

28. Total DAC aid fell to 0.27 per cent of the combined gross national product (GNP) of DAC countries in 1995, putting them the furthest they have been from the United Nations aid target of 0.7 per cent of GNP since the target was

adopted in 1970 as part of the International Development Strategy for the Second United Nations Development Decade (General Assembly resolution 2626 (XXV), para. 43).

29. Clearly, long-standing international cooperation commitments are being re-examined. The United States of America, once the largest donor, has slipped to the fourth position. DAC reported that the United States aid ratio had fallen to 0.10 per cent of GNP in 1995, the lowest since such accounting was introduced in 1950. However, while the volume of United States aid dropped 28 per cent in 1995, aid flows in constant prices and exchange rates also fell 5 per cent or more in Canada, France, Germany, Italy, Portugal, Spain, Switzerland and the United Kingdom.

30. Only four DAC donors reported significant increases in ODA in real terms in 1995, namely, Belgium (23 per cent), Finland (7.9 per cent), Ireland (21.1 per cent) and the Netherlands (14.1 per cent). Only four countries have met the United Nations aid target (Denmark, the Netherlands, Norway and Sweden).

31. ODA from the largest donor, Japan, increased only 1.1 per cent in real terms (dropping Japan's ODA ratio to 0.28 per cent of GNP from 0.29 per cent). Moreover, in July 1996 the Government of Japan announced that the maximum allowable rise in ODA for its fiscal 1997 budget will be 2.6 per cent, the lowest increase since 1979 and well below the overall spending limit of 3.4 per cent. While ODA spending has been one of the highest growth items in Japan, this development seems to suggest that the future growth of Japanese ODA flows will be more tightly constrained.

32. These disheartening developments in ODA are being reflected, quite naturally, in the concessional channels of multilateral cooperation. In particular, the resource commitments, which are on a grant basis, of the operational agencies of the United Nations system dropped from $3.5 billion in 1994 to $3.1 billion in 1995, while the largest multilateral lending agency, the International Development Association (IDA) of the World Bank committed $6.0 billion in concessional loans in 1995, down from $7.3 billion in 1994. 14/ The African Development Fund (ADF), the concessional arm of the African Development Bank, made no new lending commitments in 1995, nor any in 1994. 15/ Resources of the ADF had been exhausted at the end of 1993 and ADF replenishment was not agreed upon until May 1996.

33. In the case of IDA, part of the difficulty was that it did not have at hand all the resources that had been committed to it in its Tenth Replenishment (IDA-10), which covered the three fiscal years of the World Bank that ended in June 1996. In March 1996 an agreement was finally reached among IDA contributors for funding the next three-year period (IDA-11). 16/ The refunding agreement was unique in that it applies to the second and third years of the replenishment period. The first year is to be supported by an interim fund in which the United States would not participate (nor would United States firms be eligible to compete for procurement contracts on IDA projects funded from the interim fund). Instead, the United States Government pledged to pay its arrears under IDA-10. The latter required adoption of legislation by the United States Congress to appropriate $934 million for the arrears payment. As this report was being written, the relevant legislation was working its way through both

houses of the Congress, but in neither house was the full amount included. This is a matter that must be monitored closely since it is considered a key part of the commitments made in the IDA-11 funding agreement.

IV. CONCLUSION

34. Analyses of the net transfer of resources of developing countries typically highlight several issues that are of concern to the international community (which is why, despite continued controversy, the concept continues to be used in different forums). These concerns range from the volatility of private financial flows to middle-income countries, to the disappointing developments in concessional assistance to low-income countries. In addition, the net transfer of resources, as a measure of international cash flow, has traditionally been closely associated with analyses of debt problems. A discussion of recent trends in the net resource transfers could thus focus on all three sets of issues. However, given that other reports that focus on private financial flows and on debt are being presented to the General Assembly, this report has focused on the recent data on overall net transfers and on the pressing challenge in the realm of official development assistance.

35. One lesson of the recent surge in net transfers is the reminder that there are dangers as well as opportunities in the international financial market place. It may be an old lesson, but it nevertheless remains vital: Governments need to be concerned not only with the overall volume of net financial inflows, but also with their durability. The combination of sustainable domestic policies and strong economic growth seems to set the stage for the more desirable mixes of private financial inflows.

36. The relative absence of private-sector net transfers to Africa in the first half of the 1990s underlines another point. The limited attractiveness to potential foreign investors of low-income, slow growth and often distressed economies means that official sources of finance must still carry much of the burden if these countries are to invest more than their limited domestic savings allow and accelerate their economic growth. The recent stirring of the African economy 17/ suggests that the continent may be able to make better use of resource inflows than might have been the case earlier. Africa should be allowed to try and for this more, not less, official assistance is required. The United Nations System-Wide Special Initiative on Africa, announced in March 1996, could lay the foundation for a new international impetus in this direction.

37. From its earliest days, the United Nations has been a lightning rod for debate and action on international cooperation for development. Donors regularly reaffirm the principles of development assistance at the United Nations and Governments have made commitments at a series of United Nations conferences that would seem to encumber additional resources under the rubric of official development assistance. Yet, as we race to the twenty-first century, statistics on ODA point in another direction.

38. At its heart, development assistance is a political question: Governments allocate monies from their national budgets for ODA and if ODA levels are

falling it is because public spending priorities are changing. If it were only a question of one country reducing its commitment, others might successfully pressure that country to participate or, as a fall-back, replace that country's resources with their own. But the data on ODA suggest that the pessimism on this question is more widespread, however much misplaced. We know that judiciously applied in the proper circumstances and targeted in appropriate ways, aid promotes development. It thus seems to be a question of determining how to recover political momentum for development assistance.

Notes

1/ See the World Economic and Social Survey, 1995 (United Nations publications, Sales No. E.95.II.C.1), section entitled "Investment and the net transfer of financial resources" (and associated tables in the Statistical Annex) and the World Economic and Social Survey, 1996 (United Nations publication, Sales No. E.96.II.C.1 and Corr.1), section entitled "The international transfer of financial resources" (and associated tables in the Statistical Annex).

2/ Reasonably complete data are not yet available for all countries in the sample for 1995.

3/ Brazil only reached the final debt restructuring agreement with its commercial bank creditors in 1994, the same year this successful anti-inflation adjustment programme came into effect (on the latter, see World Economic and Social Survey, 1995, op. cit., section entitled "Brazil's innovative attack on inflation".

4/ At the end of 1995, the reserves of the 93-country sample, taken together covered four months of imports of goods, services and interest payments, the comparable ratio for Latin America and the Caribbean was five months of imports (see World Economic and Social Survey, 1996, op. cit., table A.28).

5/ More precisely, with the growth of imports swelling Mexico's deficit in the balance of trade in goods and services in 1994, an additional $5 billion in net financial transfers was required; however, the foreign purchases of Mexican securities declined by more than $20 billion, depriving Mexico of that source of foreign exchange inflow and thus, instead of adding to reserves (almost $5 billion had been added in 1993), Mexico drew down its reserves by $20 billion (data of International Monetary Fund).

6/ While a considerable portion of direct investment inflows might be spent on purchases of imported capital equipment, the data for the net transfer associated with direct investment in tables 3 to 7 do not represent the value of associated imports. They represent, rather, a financial capacity to purchase imports. Indeed, some of the foreign currency inflow would likely be exchanged for local currency (e.g., for local construction costs) and some of those funds could then be added to official reserves.

7/ United Nations Conference on Trade and Development, World Investment Report 1995: Transnational Corporations and Competitiveness (United Nations publication, Sales No. E.95.II.A.9), p. xxiii.

8/ See World Economic and Social Survey, 1996, op. cit., table III.2.

9/ See Guillermo A. Calvo, Leonardo Leiderman and Carmen M. Reinhart, "Inflows of capital to developing countries in the 1990s", Journal of Economic Perspectives, vol. 10, No. 2 (spring 1996).

10/ See Economic Commission for Latin America and the Caribbean, Preliminary Overview of the Latin American and Caribbean Economy 1995, December 1995.

11/ See Göran Ohlin, "The negative net transfers of the World Bank" in United Nations Conference on Trade and Development, International Monetary and Financial Issues for the 1990s (United Nations publication, Sales No. E.95.II.D.3).

12/ Communiqué of the Interim Committee of the Board of Governors of the International Monetary Fund, 22 April 1996, para. 6.

13/ For a discussion of the new debt initiative, see "External debt crisis and development", report of the Secretary-General (A/51/294), sect. III.

14/ See World Economic and Social Survey, 1996, op. cit., table A.34.

15/ Ibid., p. 76.

16/ For a summary of the consideration of this issue by the IMF/World Bank Development Committee in April 1996, see "External debt crisis and development", report of the Secretary-General (A/51/294).

17/ See Economic Commission for Africa, Report on the Economic and Social Situation in Africa, 1996 (E/ECA/CM.22/6, 29 April 1996).

Table 1. Net transfer of financial resources of groups of developing countries, 1985-1995 a/

(In billions of United States dollars)

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995 b/
Africa	-7.4	2.1	-3.3	3.5	0.4	-10.8	-6.4	-1.4	1.3	6.3	5.8
Sub-Saharan Africa c/	3.1	6.0	6.0	7.8	6.3	8.1	8.7	10.8	8.7	6.6	7.7
Latin America and the Caribbean	-30.6	-11.9	-18.1	-21.8	-27.3	-27.1	-8.9	8.4	14.3	6.4	0.4
West Asia	18.3	34.4	22.1	27.3	19.1	4.3	51.9	39.8	34.3	17.2	10.1
Other Asian countries	4.1	-11.1	-29.9	-18.2	-11.0	-8.6	-7.2	-7.3	9.1	0.8	14.6
China	12.5	7.4	-0.3	4.1	4.9	-10.7	-11.6	-5.0	11.5	-7.6	-5.5
Four exporters of manufactures d/	-12.1	-22.7	-3.0	-26.4	-21.7	-11.5	-7.1	-8.6	-12.6	-13.0	-7.1
All developing countries	-17.6	11.0	-32.7	-16.6	-24.7	-38.5	30.1	38.7	66.6	35.6	38.4
Memorandum items											
Sample of 93 countries e/	-17.3	-4.1	-34.0	-32.4	-29.7	-28.1	-5.2	14.2	47.3	35.6	38.0
Least developed countries f/	6.5	7.7	7.8	9.2	9.4	11.2	11.5	13.3	11.7	10.2	12.3

Source: World Economic and Social Survey, 1996 (United Nations publication, Sales No. E.96.II.C.1), table III.1.

a/ Expenditure basis (negative of balance of payments on goods, services and private transfers).

b/ Preliminary estimate.

c/ Excluding Nigeria and South Africa.

d/ Hong Kong, Republic of Korea, Singapore and Taiwan Province of China.

e/ Ninety-three capital-importing countries, for which sufficient data are available.

f/ Covering 43 out of the 48 least developed countries.

Table 2. Countries with the largest positive and negative net financial transfers, 1985-1994 a/

(In billions of United States dollars per year)

	1985-1990	1991-1994
Five countries with largest negative net transfer in 1991-1994		
Brazil	-10.4	-9.5
China	3.0	-3.2
Indonesia	-1.6	-2.8
Nigeria	-3.5	-2.5
Egypt	1.2	-1.7
Five countries with largest negative net transfer in 1985-1990		
Brazil	-10.4	-9.5
Republic of Korea	-6.6	3.3
Mexico	-5.6	12.5
Argentina	-3.8	4.2
Nigeria	-3.5	-2.5
Five countries with largest positive net transfer in 1991-1994		
Mexico	-5.6	12.5
Thailand	0.8	6.9
Argentina	-3.8	4.2
Republic of Korea	-6.6	3.3
Pakistan	1.0	2.2
Five countries with largest positive net transfer in 1985-1991		
India	4.5	1.8
China	3.0	-3.2
Egypt	1.2	-1.7
Bangladesh	1.1	0.7
Pakistan	1.0	2.2

Source: Department for Economic and Social Information and Policy Analysis of the United Nations, based on data of the International Monetary Fund.

a/ Based on sample of 93 countries for which adequate balance-of-payments and debt data are available.

Table 3. Net transfer of financial resources of capital-importing developing countries, 1985-1995 a/

(In billions of United States dollars)

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995 b/
Transfer through direct investment											
Net investment flow	8.3	6.1	9.3	15.4	17.4	16.8	22.7	30.9	46.8	58.7	63.6
Direct investment income: net	-8.7	-7.9	-8.9	-9.9	-11.5	-12.9	-12.6	-13.7	-16.2	-17.0	-17.8
Net transfer	-0.4	-1.7	0.5	5.5	5.9	3.9	10.1	17.2	30.6	41.7	45.8
Transfer through medium- and long-term foreign private borrowing											
Net credit flow	13.5	9.1	4.3	12.0	3.2	10.8	14.7	27.5	31.6	36.9	38.0
Interest paid	-38.9	-34.3	-33.5	-38.7	-32.6	-29.3	-28.1	-27.4	-24.8	-29.4	-42.8
Net transfer	-25.5	-25.2	-29.2	-26.8	-29.4	-18.6	-13.5	0.1	6.8	7.5	-4.8
Transfer through net stock transactions, short-term borrowing and domestic outflows c/											
Net transfer	-11.4	-6.8	-13.5	-22.3	-10.9	2.5	21.7	24.6	36.8	1.6	29.3
Transfer through private grants: net	3.7	4.7	5.0	6.2	4.8	6.3	7.9	9.5	9.0	7.9	8.0
Transfer through official flows											
Official transfers (grants)	10.8	10.3	11.7	12.3	13.3	17.6	17.7	15.8	12.7	10.4	10.4
Net official credits	19.0	18.5	16.0	13.5	20.1	22.2	20.6	16.3	17.4	10.4	35.9
Interest paid	-12.8	-15.7	-16.5	-17.9	-18.1	-20.6	-21.9	-22.1	-23.2	-24.5	-31.1
Net transfer	17.0	13.1	11.2	7.9	15.4	19.2	16.4	10.0	7.0	-3.7	15.2
Total net transfer (financial basis)	-16.5	-16.1	-26.0	-29.5	-14.3	8.2	42.6	61.4	90.2	55.0	94.0
Use of official reserves d/	-0.8	12.0	-8.0	-2.9	-15.4	-36.4	-47.8	-47.2	-42.9	-19.4	-56.0
Total net transfer (expenditure basis)	-17.3	-4.1	-34.0	-32.4	-29.7	-28.1	-5.2	14.2	47.3	35.6	38.0

Source: World Economic and Social Survey, 1996 (United Nations publication, Sales No. E.96.II.C.1), table A.27.

Note: Direct investment is net of reinvested earnings (cash flow approach); official credits include use of IMF credit; interest includes IMF charges; private grants include net flow of gifts from overseas residents (excluding workers' remittances) and grants by non-governmental organizations.

a/ Sample of 93 countries, excluding the surplus-energy exporters (Brunei Darussalam, Iran (Islamic Republic of), Iraq, Kuwait, Libyan Arab Jamahiriya, Qatar, Saudi Arabia and the United Arab Emirates) and recent surplus countries (Hong Kong, Singapore and Taiwan Province of China).

b/ Preliminary estimate.

c/ Calculated as a residual (includes short-term trade financing, normal and unusual outflows ("capital flight"), arrears on interest due and other flows captured in balance-of-payments data as "errors and omissions" and presumed to be financial flows.

d/ Additions to reserves are shown as negative numbers.

Table 4. Net transfer of financial resources of Latin America and the Caribbean, 1985-1995 a/

(In billions of United States dollars)

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995 b/
Transfer through direct investment											
Net investment flow	3.8	2.4	3.9	6.7	5.0	5.0	8.9	11.5	9.7	12.3	9.4
Net dividends and other income	-2.9	-3.4	-3.4	-4.4	-5.9	-6.0	-5.3	-6.0	-6.3	-7.2	-8.3
Net transfer	0.8	-1.1	0.5	2.3	-0.9	-1.0	3.6	5.4	3.5	5.1	1.1
Transfer through private credit											
Medium- and long-term foreign private borrowing											
Net credit flow	2.7	-0.6	1.5	0.3	-6.3	2.5	4.2	6.8	17.8	15.7	9.9
Interest paid	-25.5	-21.2	-20.3	-23.8	-15.7	-12.4	-11.1	-10.9	-9.9	-13.2	-18.7
Net transfer	-22.8	-21.8	-18.8	-23.5	-22.1	-9.9	-7.0	-4.0	7.9	2.5	-8.8
Short-term borrowing and net domestic outflow c/											
Net transfer	-11.6	-0.2	-0.2	-10.6	-5.6	-7.2	11.7	31.9	22.7	-0.1	13.0
Transfer through private grants: net	1.1	1.1	1.2	1.7	1.6	2.9	3.8	3.8	3.4	3.1	3.4
Transfer through official flows											
Official transfers (grants)	2.5	1.5	2.1	2.0	2.2	3.4	2.3	2.6	2.0	1.8	1.6
Net official credits	6.3	6.1	4.1	4.1	4.8	7.2	0.9	-0.8	2.1	-2.7	25.5
Interest paid	-4.1	-5.3	-5.5	-5.9	-5.8	-6.9	-8.0	-8.2	-8.8	-8.6	-10.7
Net transfer	4.7	2.3	0.7	0.3	1.3	3.7	-4.8	-6.5	-4.7	-9.5	16.5
Total net transfer (financial basis)	-27.7	-19.6	-16.6	-29.8	-25.7	-11.4	7.3	30.7	32.7	1.1	25.2
Use of official reserves d/	-2.9	7.7	-1.5	8.0	-1.6	-15.7	-16.3	-22.3	-18.4	5.3	-24.8
Total net transfer (expenditure basis)	-30.6	-11.9	-18.1	-21.8	-27.3	-27.1	-8.9	8.4	14.3	6.4	0.4

Source: Department for Economic and Social Information and Policy Analysis of the United Nations, based on data of IMF and World Bank and United Nations Secretariat estimates.

a/ Sample of 25 countries and territories.

b/ Preliminary estimate.

c/ Calculated as a residual (includes short-term trade financing, normal and unusual outflows ("capital flight"), arrears on interest due and other flows captured in balance-of-payments data as "errors and omissions" and presumed to be financial flows.

d/ Additions to reserves are shown as negative numbers.

Table 5. Net transfer of financial resources of Africa, 1985-1995 a/

(In billions of United States dollars)

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995 b/
Transfer through direct investment											
Net investment flow	2.4	1.6	1.9	2.1	3.9	1.5	2.0	2.3	2.8	4.1	3.0
Net dividends and other income	-2.1	-2.0	-2.6	-2.3	-1.6	-2.1	-1.8	-1.5	-2.6	-2.5	-2.9
Net transfer	0.3	-0.4	-0.7	-0.2	2.3	-0.6	0.2	0.8	0.1	1.5	0.2
Transfer through private credit											
Medium- and long-term foreign private borrowing											
Net credit flow	0.3	1.9	2.2	3.4	1.5	-0.7	-1.5	-1.7	-0.7	-0.5	-0.3
Interest paid	-4.1	-3.2	-3.0	-3.6	-3.9	-3.8	-3.6	-3.6	-2.6	-2.7	-4.1
Net transfer	-3.7	-1.4	-0.8	-0.2	-2.4	-4.6	-5.2	-5.3	-3.2	-3.1	-4.4
Short-term borrowing and net domestic outflow c/											
Net transfer	-2.7	0.1	-6.0	-3.0	-5.0	-4.8	-3.0	-1.1	2.6	0.7	3.0
Transfer through private grants: net	1.1	1.4	1.2	1.2	1.3	1.3	1.7	2.0	2.0	1.2	1.7
Transfer through official flows											
Official transfers (grants)	4.5	4.9	5.7	6.2	7.4	9.8	9.5	8.7	6.4	4.3	3.7
Net official credits	4.9	5.1	5.6	5.4	6.4	5.8	6.6	5.9	4.3	5.7	4.3
Interest paid	-2.8	-3.6	-3.2	-4.1	-4.2	-4.8	-4.9	-4.7	-4.4	-5.3	-5.1
Net transfer	6.6	6.5	8.1	7.5	9.7	10.7	11.2	9.9	6.2	4.7	3.0
Total net transfer (financial basis)	1.8	6.2	1.8	5.4	5.8	2.5	5.2	6.3	5.7	3.8	1.8
Use of official reserves d/	-4.6	1.5	0.2	1.6	-1.6	-7.6	-6.5	-4.1	-2.7	1.9	-0.0
Total net transfer (expenditure basis)	-2.8	7.6	2.0	7.0	4.2	-5.1	-1.3	2.2	3.0	5.8	1.8

Source: Department for Economic and Social Information and Policy Analysis of the United Nations, based on data of IMF and World Bank and United Nations Secretariat estimates.

a/ Sample of 44 countries.

b/ Preliminary estimate.

c/ Calculated as a residual (includes short-term trade financing, normal and unusual outflows ("capital flight"), arrears on interest due and other flows captured in balance-of-payments data as "errors and omissions" and presumed to be financial flows.

d/ Additions to reserves are shown as negative numbers.

Table 6. Net transfer of financial resources in Sub-Saharan Africa, 1985-1995 a/

(In billions of United States dollars)

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995 b/
Transfer through direct investment											
Net investment flow	0.5	0.3	0.5	0.4	0.5	-0.1	0.8	0.3	0.2	0.2	0.1
Net dividends and other income	-0.8	-0.8	-1.1	-1.0	-1.1	-1.4	-1.2	-1.4	-1.3	-1.2	-1.3
Net transfer	-0.3	-0.5	-0.6	-0.6	-0.6	-1.5	-0.4	-1.1	-1.1	-1.1	-1.2
Transfer through private credit											
Medium- and long-term foreign private borrowing											
Net credit flow	-0.1	0.2	-0.1	0.5	0.2	0.0	0.5	0.1	0.1	-0.6	-1.1
Interest paid	-1.1	-1.0	-0.9	-0.8	-0.7	-0.7	-0.7	-0.6	-0.4	-0.5	-0.9
Net transfer	-1.2	-0.8	-0.9	-0.2	-0.5	-0.7	-0.2	-0.5	-0.3	-1.2	-2.0
Short-term borrowing and net domestic outflow c/											
Net transfer	-0.2	1.0	-0.6	0.7	-1.9	0.9	0.3	0.9	1.1	-0.3	1.4
Transfer through private grants: net	0.8	0.7	1.0	1.0	0.9	1.1	1.5	1.8	1.8	1.8	2.0
Transfer through official flows											
Official transfers (grants)	3.3	3.9	4.7	5.3	6.1	6.1	5.7	6.2	4.5	4.4	4.3
Net official credits	2.8	3.3	4.2	4.2	4.1	4.3	4.0	4.2	3.7	3.6	3.5
Interest paid	-1.3	-1.7	-1.6	-1.7	-1.6	-1.6	-1.8	-1.5	-1.4	-1.8	-1.7
Net transfer	4.8	5.5	7.3	7.7	8.6	8.8	7.9	8.9	6.8	6.2	6.1
Total net transfer (financial basis)	3.9	6.0	6.1	8.6	6.5	8.5	9.1	10.1	8.3	5.6	6.2
Use of official reserves d/	-0.8	-0.0	-0.1	-0.8	-0.2	-0.4	-0.4	0.8	0.4	1.0	1.5
Total net transfer (expenditure basis)	3.1	6.0	6.0	7.8	6.3	8.1	8.7	10.8	8.7	6.6	7.7

Source: Department for Economic and Social Information and Policy Analysis of the United Nations, based on data of IMF and World Bank and United Nations Secretariat estimates.

a/ Sample of 39 countries, excluding Nigeria and South Africa.

b/ Preliminary estimate.

c/ Calculated as a residual (includes short-term trade financing, normal and unusual outflows ("capital flight"), arrears on interest due and other flows captured in balance-of-payments data as "errors and omissions" and presumed to be financial flows.

d/ Additions to reserves are shown as negative numbers.

Table 7. Net transfer of financial resources in Asia, 1985-1995 a/

(In billions of United States dollars)

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995 b/
Transfer through direct investment											
Net investment flow	3.1	3.7	5.8	9.7	9.6	12.7	15.4	17.4	35.2	40.6	51.1
Net dividends and other income	-4.3	-3.2	-3.6	-4.0	-5.0	-6.0	-6.2	-7.0	-7.5	-8.5	-9.5
Net transfer	-1.2	0.4	2.2	5.7	4.6	6.7	9.1	10.4	27.8	32.2	41.6
Transfer through private credit											
Medium- and long-term foreign private borrowing											
Net credit flow	11.3	8.3	-0.7	4.5	6.5	9.0	12.5	17.6	8.8	23.5	49.1
Interest paid	-8.2	-8.5	-9.0	-9.8	-11.7	-11.3	-11.5	-10.8	-11.0	-11.8	-13.8
Net transfer	3.1	-0.2	-9.7	-5.3	-5.3	-2.3	1.0	6.8	-2.2	11.7	35.3
Short-term borrowing and net domestic outflow c/											
Net transfer	9.0	6.6	7.8	-9.9	-2.6	-3.4	15.7	-5.1	6.6	-9.4	-16.9
Transfer through private grants: net	1.0	1.6	1.9	2.6	1.1	1.1	1.7	3.0	3.0	2.6	2.3
Transfer through official flows											
Official transfers (grants)	4.5	4.7	4.5	4.8	4.3	3.7	4.1	3.9	3.4	4.1	4.3
Net official credits	8.1	6.7	7.6	7.2	11.6	10.2	14.7	13.6	12.9	7.5	8.1
Interest paid	-4.8	-5.9	-6.7	-6.9	-7.2	-7.9	-8.3	-8.8	-10.0	-10.9	-13.5
Net transfer	7.8	5.4	5.4	5.0	8.8	6.0	10.5	8.8	6.4	0.8	-1.1
Total net transfer (financial basis)	19.7	13.9	7.7	-1.9	6.6	8.1	38.0	23.9	41.5	37.9	51.3
Use of official reserves d/	3.1	-21.7	-36.3	-14.3	-18.7	-19.2	-44.7	-29.2	-29.7	-54.7	-35.3
Total net transfer (expenditure basis)	22.7	-7.9	-28.6	-16.2	-12.1	-11.1	-6.8	-5.3	11.8	-16.8	16.0

Source: Department for Economic and Social Information and Policy Analysis of the United Nations, based on data of IMF and World Bank and United Nations Secretariat estimates.

a/ Sample of 21 countries, including China and India. Hong Kong, Singapore and Taiwan Province of China are not included. Also excluded are surplus-energy-exporters, namely Brunei Darussalam, Iran (Islamic Republic of), Iraq, Kuwait, Qatar, Saudi Arabia and the United Arab Emirates.

b/ Preliminary estimate.

c/ Calculated as a residual (includes short-term trade financing, normal and unusual outflows ("capital flight"), arrears on interest due and other flows captured in balance-of-payments data as "errors and omissions" and presumed to be financial flows.

d/ Additions to reserves are shown as negative numbers.

Table 8. Net transfer of financial resources from multilateral financial institutions to developing countries, 1985-1995 a/

(In billions of United States dollars)

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995 b/
International Monetary Fund	-2.7	-5.6	-7.4	-6.8	-4.4	-2.7	-2.5	-2.8	-3.2	-2.3	8.5
Multilateral development banks	6.6	5.8	3.7	2.5	3.0	3.7	0.6	-1.6	-0.6	-5.1	-3.1
Concessional	3.5	3.9	4.7	4.7	4.5	5.3	5.7	5.9	5.7	7.2	..
Total	3.9	0.2	-3.7	-4.3	-1.3	1.0	-1.9	-4.4	-3.7	-7.4	5.4
Memorandum items											
International Bank for Reconstruction and Development	1.8	0.6	-1.2	-2.9	-2.5	-2.1	-6.1	-8.4	-6.2	-4.9	-8.5
International Development Association	2.6	2.8	3.5	3.4	3.1	3.8	3.9	4.4	4.0	5.1	5.8

Source: Department for Economic and Social Information and Policy Analysis of the United Nations Secretariat, based on data provided by the World Bank.

a/ Sample of 93 developing countries.

b/ Preliminary.

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GENERAL ASSEMBLY
Fifty-first session
Item 50 of the provisional agenda*
REPORT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

SECURITY COUNCIL
Fifty-first year

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly and to the members of the Security Council the third annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, submitted by the President of the International Tribunal in accordance with article 34 of its statute (see S/25704, annex) which states:

> "The President of the International Tribunal shall submit an annual report of the International Tribunal to the Security Council and to the General Assembly."

* A/51/150.

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LETTER OF TRANSMITTAL

5 August 1996

Your Excellencies,

I have the honour to submit the third annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, dated 5 August 1996, to the Security Council and the General Assembly, pursuant to article 34 of the statute of the Tribunal.

Please accept, Excellencies, the renewed assurances of my highest consideration.

(Signed) Antonio CASSESE
President

H.E. Mr. Boutros Boutros-Ghali
Secretary-General
United Nations
New York, NY 10017
United States of America

H.E. Mr. Tono Eitel
President of the Security Council
United Nations
New York, NY 10017
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THIRD ANNUAL REPORT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

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SUMMARY

The third annual report of the International Criminal Tribunal for the former Yugoslavia covers the activities of the Tribunal during the period 31 July 1995 to 31 July 1996.

Since its first annual report, the Tribunal has moved from the "drawing board" to the operational stage. In the third year of its activity the Tribunal has taken positive steps forward and its procedures have been thoroughly tested.

As is well known, the Tribunal comprises three organs: its judiciary, consisting of 11 Judges assigned to two Trial Chambers and one Appeals Chamber, the Office of the Prosecutor and the Registry.

The Trial Chambers have become increasingly active, having foregone the traditional arrangement of three judicial sessions, sitting continuously instead since May 1996. This extra workload reflects the fact that the Tribunal has become a functioning judicial organ, having commenced its first trial and with two other cases before it in the pre-trial phase; the trials proper are due to start later this year, and a fourth case is at the sentencing stage, the accused having entered a guilty plea.

Furthermore, since the last annual report, the Judges have confirmed 10 public indictments against a total of 35 individuals, two of whom had already been indicted last year for other offences, and have issued arrest warrants against all of those accused. In addition to the indictee currently standing trial, six of the newly indicted persons are in the custody of the Tribunal at the United Nations Detention Unit in The Hague. The Chambers have also been busy with cases in which it has not been possible to serve warrants of arrest issued by the Tribunal on the accused. To remedy this default, the Chambers, in five cases, have issued international arrest warrants sent to each Member State of the United Nations, as well as to other States and Entities, following a procedure under rule 61 of the Tribunal's Rules of Procedure and Evidence.

Over the last year the Appeals Chamber sat for the first time, rendering a judgement on an interlocutory, i.e. pre-trial, appeal in which defence counsel argued before the Chamber that the Tribunal was unlawfully established; did not have primacy over competent domestic courts; and lacked jurisdiction over the subject matter (i.e. grave breaches of the Geneva Conventions, etc.). The Appeals Chamber dismissed these grounds of appeal. The decision of the Appeals Chamber is an important event, as it is the first time that an international appeals body has made a pronouncement on the current status of international criminal law and humanitarian law.

The fieldwork of the Office of the Prosecutor has been greatly enhanced by the signing of the Dayton Accord which gave its staff the freedom of movement necessary to carry out investigations in areas which, until then, had been inaccessible. The Office of the Prosecutor has coordinated its efforts

with the NATO Implementation Force (IFOR) in areas such as the transferring of indictees and other individuals and the securing of mass grave sites and their exhumations. Because of the enlarged role of the Office of the Prosecutor facilitated by the Dayton Accord, the Prosecutor has expanded the Sarajevo field office and created the Fugitive Intelligence Support Team, which is meant to assist in obtaining persons accused by the Tribunal through its coordination of various national and international law enforcement agencies.

The third organ of the Tribunal, the Registry (which, among other things, is responsible for court management functions; management of the legal aid system for indigent accused; and supervision of the Detention Unit and the Victims and Witnesses Unit), has been busy fine-tuning its procedures, which have been challenged by the increased workload of the Tribunal and the surrender and transfer of detainees over the period covered by this report.

In spite of the remarkable headway made so far, the Tribunal remains heavily dependent on State cooperation to discharge its mandate. In this respect, the Dayton Accord has proved instrumental in enhancing the role of the Tribunal: among other things, it has restated, spelled out and specified the obligation of the States and Entities of the former Yugoslavia to cooperate with the Tribunal. Nevertheless, some of these States or Entities still fail to do so. This applies in particular to the Federal Republic of Yugoslavia (Serbia and Montenegro) and Republika Srpska, which so far have failed fully to cooperate by arresting and surrendering to the Tribunal persons indicted of war crimes, crimes against humanity and genocide.

It is therefore imperative that the international community impress upon States and Entities the need to support and fully cooperate with the Tribunal: otherwise, the aims of the Security Council pursued in establishing the Tribunal would be defeated.

Owing to the increased judicial activities of the Tribunal it has become imperative that a second courtroom be established. With a trial currently under way and two more scheduled for this year, the right to a prompt trial may be jeopardized if adequate funding for the construction of a second courtroom does not materialize.

I. INTRODUCTION

1. The 12 months that have passed since the Tribunal's second annual report, of 23 August 1995 (A/50/365-S/1995/728), have seen great changes both in the former Yugoslavia and at the Tribunal. Peace and relative stability have come to Bosnia and Herzegovina in the wake of the Dayton Accord, but in several respects that affect the Tribunal, the benefits which the Accord seemed to promise have not been fully realized. The Tribunal has, nonetheless, become tremendously busy in this period, both with hearings, notably those of the Tribunal's first trial, and with all the extensive work that precedes and accompanies them.

2. The scope of the Tribunal's work is broad. In order fully to understand this breadth of activity, it must be appreciated that, in addition to the Tribunal's strictly judicial role, it performs many functions quite unfamiliar to judicial bodies having criminal jurisdiction within States. This is, in large part, because the Tribunal has no State to look to for the performance of all those vital functions ancillary to the administration of justice.

3. The most obvious instance of this aspect of the Tribunal is the existence, as an integral part of the Tribunal, of the Office of the Prosecutor. The Office is charged with the initial investigation, indictment and subsequent prosecution before Chambers of the Tribunal of those accused of crimes within the Tribunal's jurisdiction. It thus performs functions which in many national systems would be the responsibility, respectively, of the State's police force and of its prosecution service. Another novel feature is that the Judges of the Tribunal are obliged by the statute to "legislate" on procedural matters, namely by adopting and amending Rules of Procedure and Evidence, in contrast to national systems, where the criminal code is adopted by a parliament or legislature. Another function ancillary to the administration of justice which the Tribunal undertakes is the staffing, managing and controlling of its own detention centre, something that would normally be the function of a Prisons Department. The Tribunal also funds and administers its own legal aid system, assigning independent counsel for indigent accused; it provides a Victims and Witnesses Unit for the care, support and protection of prosecution and defence witnesses brought to The Hague from their countries of residence. The Tribunal also has a substantial Translation Section, concerned not only with French and English, the two working languages of the Tribunal, but also extensively with the languages of the former Yugoslavia.

4. In addition to these functions, there is another aspect which sets the Tribunal apart from domestic criminal courts. The Tribunal's particular jurisdiction involves it in extensive dealings with State Governments, not only that of the host country, the Netherlands, and those of the several successor States of the former Yugoslavia, but also quite generally with those of the Member States of the United Nations and, more specifically, of the member States of the European Union. The Tribunal also maintains close relations with non-governmental organizations and with the media in all its forms. As an instance of the latter involvement, on the opening of its first trial, the Tribunal accommodated some 390 media representatives in its modest premises in

The Hague, and the proceedings of the trial were broadcast on radio and television worldwide.

5. In reading this report it will be important to bear in mind the existence of these multifarious functions of the Tribunal, many of them foreign to the familiar functions of domestic criminal courts, in order to understand both the scope of the Tribunal's work and the challenges it faces in the discharge of its mandate. The Tribunal was established by the Security Council to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia and thus, by bringing an end to impunity, to contribute to the restoration of peace and security. In this context, the words of the United Nations High Commissioner for Human Rights, Mr. Jose Ayala Lasso, are apt: "We must rid this planet of the obscenity that a person stands a better chance of being tried and judged for killing one human being than for killing 100,000".

Part one

MAIN ACTIVITIES OF THE TRIBUNAL TO DATE

II. THE CHAMBERS

6. There have been two changes in the composition of the Chambers in the past year. On 2 October 1995, Judge Fouad Abdel-Moneim Riad, Professor of Law at Cairo University, replaced Judge Georges Abi-Saab, also from Egypt, who resigned in order to resume his academic activities. On 15 July 1996, Judge Rustam Sidhwa resigned from the Chambers for health reasons.

A. Judicial action

7. The judicial work of the Tribunal has increased dramatically in the last year. As a consequence, the Chambers have foregone the traditional arrangement of three judicial sessions of approximately 12 weeks each and have been sitting continuously since May 1996.

8. Since the last report, 10 public indictments against a total of 33 individuals have been confirmed and arrest warrants have been issued against those accused. Six of the newly indicted persons, Tihofil Blaškić, Dražen Erdemović, Zejnil Delalić, Zdravko Mucić, Esad Landžo and Hazim Delić, are in the Tribunal's custody, in addition to Duško Tadić, who was indicted last year. The Tribunal's first trial, of Duško Tadić, started on 7 May 1996 and is expected to last for some months.

1. Indictments

9. In addition to the 33 persons indicted are two persons indicted a second time this year. Radovan Karadžić and Ratko Mladić, respectively the President and the Commander of the army of the Bosnian Serb administration in Pale, had been indicted in 1995 for, inter alia, genocide and crimes against humanity for

the atrocities perpetrated against the civilian population of Bosnia and Herzegovina, the sniping campaign against Sarajevo and the taking of United Nations peacekeepers as hostages and their use as "human shields". On 16 November 1995, Judge Riad confirmed an additional indictment against Karadžić and Mladić for, inter alia, genocide following the takeover of Srebrenica in July 1995.

(a) The Stupni Do indictment

10. On 29 August 1995, Judge Sidhwa confirmed an indictment against Ivica Rajić, Commander of the Second Operational Group of the Croatian Defence Council (HVO) based in Kiseljak in Bosnia and Herzegovina. The indictment charges Rajić with ordering or failing to prevent an unlawful attack by the Croatian Defence Council on the village of Stupni Do, near Vares in central Bosnia, causing death and injury to the civilian population and the almost total destruction of the village in October 1993.

(b) The Vukovar indictment

11. On 7 November 1995, Judge Riad confirmed an indictment against three persons, Milan Mrkšić, Miroslav Radić and Veselin Šljivančanin, officers in the Yugoslav People's Army (JNA) Belgrade-based Guards Brigade, for the beating and mass killing of 261 non-Serb men who were allegedly removed by force from Vukovar Hospital and later executed and buried in a mass grave at Ovcara. It is alleged that the 261 victims consisted of wounded patients, hospital staff, soldiers who had been defending the city of Vukovar, Croatian political activists and other civilians.

(c) The Lašva river valley indictments

12. The deferral application in the Lašva river valley case was described in detail in the second annual report (paras. 64-66). This year a number of indictments relating to the Lašva river valley deferral have been confirmed.

13. One indictment, confirmed by Judge McDonald on 10 November 1995, charges Dario Kordić, Tihofil Blaškić, Mario Čerkez, Ivan Šantić, Pero Skopljak and Zlatko Aleksovski with offences relating to the "ethnic cleansing" of the Lašva river valley area. Dario Kordić was an influential Bosnian Croat politician who became Vice-President of the Croatian community of Herceg-Bosna in 1992, and Tihofil Blaškić a regional commander of HVO prior to becoming the Chief of Staff of the Mostar-headquartered HVO in 1993. The crimes alleged in the indictment include bombardment and attacks on numerous undefended towns, villages and dwellings - causing the deaths of more than 100 Bosnian civilians in the Lašva river valley and in the city of Zenica - the internment of Bosnian Muslims, subjected to cruel interrogations, physical or psychological abuses and used for forced labour or as human shields, and the attack, bombardment and destruction of Bosnian Muslim businesses, buildings, personal property and livestock, in order to kill, terrorize or demoralize the Bosnian Muslim population.

14. Two other indictments confirmed by Judge McDonald on 10 November 1995, but kept confidential until 27 June 1996 in order to protect witnesses, charge nine

accused with offences allegedly committed in Ahmiči, Vitez, Busovača and other villages in the Lašva river valley.

(d) The Srebrenica indictment

15. As stated, on 16 November 1995, Judge Riad confirmed a second indictment submitted by the Prosecutor charging Radovan Karadžić and Ratko Mladić with, inter alia, genocide and crimes against humanity in relation to the events surrounding the fall of Srebrenica in July 1995.

16. The indictment alleges that, on 12 and 13 July 1995, many Muslims around a United Nations compound in Potočari, in Srebrenica, were summarily executed by Bosnian Serb military personnel, and the remaining refugees, numbering in the thousands, placed on buses by Bosnian Serb soldiers and removed from Srebrenica. Before boarding these buses, Bosnian Serb soldiers separated Muslim men from women and children and placed them on different buses for removal from the enclave.

17. Bosnian Muslims who fled Srebrenica in a huge column during the night of 11 July 1995 were attacked by Bosnian Serb forces and thousands surrendered or were captured in the days following their flight. The indictment alleges that hundreds were summarily executed by Bosnian Serb soldiers at the location of their capture or surrender and others were transported to two locations near Karakaj. At the two locations, on 14 July 1995, thousands of Bosnian Muslim men who had been separated from the refugees in Potočari or who had surrendered or been captured after fleeing Srebrenica, were allegedly transported to two large fields and summarily executed. It is charged that the killings of Muslims by Bosnian Serb soldiers, under the command and control of Karadžić and Mladić in Potočari, at surrender or capture locations, and at mass execution sites near Karakaj, resulted in the deaths of thousands of persons.

(e) The Djukić indictment

18. On 29 February 1996, Judge Karibi-Whyte confirmed an indictment against Djordje Djukić, who was a lieutenant general of the Main Staff of the Bosnian Serb army and the assistant commander for logistics to Ratko Mladić, Commander of the Bosnian Serb armed forces. He was also a lieutenant general in the Yugoslav army. He was indicted for his alleged role in aiding, as head of logistics, the shelling of civilian targets during the siege of Sarajevo between May 1992 and December 1995.

(f) The Čelebići indictment

19. On 21 March 1996, Judge Jorda confirmed the Tribunal's first indictment involving exclusively Bosnian Serb victims (although Bosnian Serb victims appeared in earlier indictments, notably the first indictment against Karadžić and Mladić, which charged them, inter alia, with responsibility for the siege of Sarajevo in which some 40,000 Serbs were among those besieged). The indictment against Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo charged them with crimes arising out of the operation of a detention facility known as the Čelebići camp.

20. The Prosecutor has stated that his investigation of the case was hampered by the reluctance of certain parties to cooperate. Investigators were unable to interview witnesses and victims in Republika Srpska and in the Federal Republic of Yugoslavia (Serbia and Montenegro). Ultimately, arrangements were made for witnesses to travel to other countries to be interviewed.

(g) The Erdemović indictment

21. On 29 May 1996, Judge Sidhwa confirmed an indictment against Dražen Erdemović for crimes allegedly committed during the Bosnian Serb takeover of Srebrenica in July 1995. Erdemović and another, Kremenović, had originally been transferred to the Tribunal as witnesses under the provisions of rule 90 bis, and prior to his indictment Erdemović was the subject of a deferral application, as described below.

(h) The Foča indictment

22. Most recently, on 26 June 1996, Judge Vohrah confirmed an indictment against eight accused, Dragan Gagović and others, who are alleged to have participated in the subjugation of Muslim women in Foča to a brutal regime of gang rape, torture and enslavement by Bosnian Serb soldiers, policemen and members of paramilitary groups after the takeover of the city in April 1992. The indictment is the first which concentrates specifically on sexual offences, alleging the commission of rape, torture and enslavement in circumstances which would constitute crimes against humanity.

2. Judicial orders

23. The increase in judicial activity has naturally led to an expansion in the number and types of orders issued by the Tribunal. The three main types of orders that were issued in the last year were: arrest warrants, orders relating to the detention and transfer of witnesses and orders relating to the detention of accused persons.

24. Arrest warrants have been sent to the authorities in appropriate States with respect to every indictment confirmed by a Judge of the Tribunal. In addition, after the signing of the Dayton Accord, the arrest warrants previously issued by the Tribunal were transmitted to IFOR deployed on the territory of Bosnia and Herzegovina pursuant to that Accord. Finally, international arrest warrants have been issued following the conclusion of rule 61 proceedings held by the Tribunal. These warrants are sent to all Member States of the United Nations, IFOR and international law enforcement authorities such as Interpol.

25. The Tribunal has issued several orders pursuant to the provisions of rule 90 bis of its Rules of Procedure and Evidence. Rule 90 bis allows a Judge of a Trial Chamber to issue an order requesting the temporary transfer to the Tribunal's custody of a person, detained in a State, who is required as a witness by the Tribunal. On 12 February 1996, Judge Stephen issued orders for the transfer from Bosnia and Herzegovina of Djordje Djukić and Aleksa Krsmanović, who had been detained by the authorities there, and for their detention at the Tribunal's facilities in The Hague. Krsmanović refused to act

as a witness for the Tribunal and was returned to the competent authorities of Bosnia and Herzegovina. Rule 90 bis was also the basis for an order issued by Judge Riad on 28 March 1996, which requested the Federal Republic of Yugoslavia (Serbia and Montenegro) to transfer two persons who were required by the Tribunal as witnesses against Karadžić and Mladić. One witness, Radoslav Kremenović, was remanded back to the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) on 25 May 1996 because his continued presence as a witness was no longer required. The other witness, Dražen Erdemović, was the subject of a deferral hearing on 28 May 1996 and was indicted on 29 May 1996.

26. Issues relating to conditions of detention were raised several times in the case against Tihofil Blaškić, since he had surrendered voluntarily to the custody of the Tribunal. On 3 and 17 April 1996, the President of the Tribunal issued orders, pursuant to rule 64 of the Rules of Procedure and Evidence, to modify the conditions of his detention. Blaškić was permitted, subject to certain conditions, to serve his pre-trial detention in a place other than the United Nations Detention Unit in The Hague. All costs relating to the special conditions of detention were to be borne by Blaškić. Owing to practical difficulties, a new order was issued on 9 May 1996 by the President that Blaškić be held at the Detention Unit until arrangements could be made for him to be held in another appropriate place. To this end, the Registry has held negotiations with the parties concerned to remove all practical obstacles to the implementation of the President's orders.

27. In addition to seeking modification of his conditions of detention, Blaškić also filed a request for provisional release from custody. On 25 April 1996, the Trial Chamber rejected this request.

3. Exercise by the Tribunal of its primacy over national courts

28. On 14 May 1996, the Prosecutor applied to a Trial Chamber to issue a formal request for deferral by the Federal Republic of Yugoslavia (Serbia and Montenegro) to the competence of the Tribunal of its investigation and criminal proceedings in respect of Dražen Erdemović. Erdemović was at the time in the custody of the Tribunal, having been transferred for questioning pursuant to an Order of Judge Riad dated 28 March 1996. The application noted that the Federal Republic of Yugoslavia (Serbia and Montenegro) was investigating Erdemović for war crimes against the civilian population of Srebrenica in July 1995.

29. The Trial Chamber, composed of Judges McDonald, Sidhwa and Vohrah, considered the Prosecutor's request at a hearing on 28 May 1996. Counsel for Erdemović and a representative of the Federal Republic of Yugoslavia (Serbia and Montenegro) were present at the hearing as amicus curiae. The representative stated that any request concerning Erdemović had to be addressed to the Ministry of Justice of the Federal Republic of Yugoslavia (Serbia and Montenegro) and that he had no instructions to oppose or accede to the proposal for a request for deferral of competence. On 29 May 1996, the Chamber granted the Prosecutor's request. In a letter dated 24 June 1996, the Chief Legal Adviser to the Federal Ministry of Foreign Affairs of the Federal Republic of Yugoslavia

(Serbia and Montenegro) advised the Tribunal's President that "all the requests made by the Trial Chamber" had been "fulfill(ed)" by the "competent Yugoslav court", and forwarded therewith the formal act by which this had been achieved. The Federal Republic of Yugoslavia (Serbia and Montenegro) had, on 11 June 1996, delivered the results of its investigation against Erdemović to the Tribunal.

4. The Tadić trial

30. This trial, which is still proceeding, is being conducted before a Chamber consisting of Judges McDonald, Stephen and Vohrah. As the first trial held at the Tribunal it necessarily has involved a number of interlocutory proceedings of general interest. The first concerned the jurisdiction of the Tribunal, challenged by the Defence. The Chamber issued a reasoned judgement on 10 August 1995.

(a) Interlocutory appeal

31. Rules 72 and 116 bis of the Rules of Procedure and Evidence provide for an interlocutory appeal of a Trial Chamber Decision on jurisdiction, utilizing an expedited procedure. In the Tadić case, following this procedure, oral arguments on the defence motion for interlocutory appeal on jurisdiction were heard by the Appeals Chamber on 7 and 8 September 1995. This was the first occasion on which the Appeals Chamber had sat. The defence motion was based on three arguments: the alleged unlawful establishment of the Tribunal; alleged unjustified primacy over competent domestic courts; and an alleged lack of subject matter jurisdiction under articles 2, 3 and 5 of the statute. The Trial Chamber had held that it was not competent to determine the first ground of challenge and had dismissed the other two.

32. The Appeals Chamber decision was rendered on 2 October 1995, less than one month after hearing the arguments. The Appeals Chamber: (1) by a majority of four to one, Judge Li dissenting, held that the Tribunal was competent to entertain the motion; (2) unanimously dismissed the plea that the Tribunal was not lawfully established; (3) unanimously dismissed the challenge to primacy; and (4) Judge Sidhwa dissenting, held that the Tribunal had subject matter jurisdiction in respect of each of the three articles of the Statute. Thus the Decision of the Trial Chamber was revised in respect of the competence of the Tribunal and confirmed in all other respects, although based on different reasoning in parts. Judges Li, Abi-Saab and Sidhwa appended separate opinions to the majority Decision and Judge Deschênes appended a Declaration.

33. The Appeals Chamber viewed this first interlocutory appeal as a unique and important event in the development of international law, since it was the first occasion upon which an international appeals body had pronounced upon the current status of international criminal law and, in particular, international humanitarian law. Consequently, it took the opportunity to consider at length the application of international humanitarian law to the actual situation in the former Yugoslavia in so far as was necessary for determination of issues of jurisdiction. The Appeals Chamber found that:

> an armed conflict exists wherever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there. (IT-94-1-AR72, para. 70).

Applying these principles to the situation in the former Yugoslavia, the Appeals Chamber found that an armed conflict existed at all relevant times.

34. Turning to the question of the characterization of such conflicts as internal or international, the Appeals Chamber held that for the Tribunal to have jurisdiction under article 2 of its statute, the alleged offences must have been committed within the context of an international armed conflict. However, the Tribunal has jurisdiction under both articles 3 and 5 in respect of any armed conflict, be it internal or international. The Appeals Chamber also considered and set out, in detail, the conditions that must be fulfilled for a violation of international humanitarian law to be subject to the jurisdiction of the Tribunal under article 3.

(b) Other preliminary motions

35. Following the Appeals Chamber affirmation of the jurisdiction of the Tribunal, the remaining preliminary motions on non-bis-in-idem and the form of the indictment were heard on 24 and 25 October 1995, the defence having by then withdrawn a motion seeking to suppress the production of evidence obtained from the accused. A further motion by the Prosecutor for protective measures for an additional witness was heard in camera immediately thereafter.

36. Reasoned decisions of the Trial Chamber were issued on 14 November 1995. The Trial Chamber dismissed the motion based on non-bis-in-idem but granted the motion on the form of the indictment in part, and instructed the Prosecutor to amend the indictment within 30 days, giving additional details of certain charges. The Prosecutor's motion for protective measures was also granted.

37. Facilities for live television broadcast of the proceedings of the Tribunal are, as a matter of principle, provided for all media. A motion by the Prosecutor filed on 1 November 1995 sought delayed release of recordings of the proceedings for all prosecution witnesses of fact to allow testimony to be edited for public broadcast, to protect witnesses in respect of whom a protective order has been made. The defence agreed to the relief sought. On 16 November 1995, the Trial Chamber entered a Decision ordering that there be no simultaneous transmission of the testimony of such witnesses unless the Prosecutor notifies the Trial Chamber that such protection is not sought. Thus, transmission of such testimony shall be delayed automatically for 30 minutes unless such delay be further extended by order of the Chamber. The equipment

which is being used for this purpose has been provided by an interim donor, but the French Government has kindly offered to supply such equipment in the future.

(c) The trial

38. The Tadić trial proper commenced on 7 May 1996 and is expected to continue until October or November of this year. Much of the delay in commencing the trial was due to the need for the defence to complete its investigations and discovery in the region of the former Yugoslavia.

39. The Trial Chamber sits four days a week, to enable the Tribunal's sole courtroom to be utilized for other matters on one day per week. In order to fulfil the pedagogical role of the Tribunal, the proceedings are broadcast in English, French and Bosnian/Croatian/Serbian.

40. More than 40 prosecution witnesses have already given evidence and it is expected that another 40 will be called before the close of the prosecution case. The defence has served a notice of alibi and has indicated that it will also call a significant number of witnesses. A number of witnesses, both prosecution and defence, have been granted protection in some form, ranging from non-release of names to the public, through visual distortion of the televised image to full anonymity. On 25 June 1996, the Trial Chamber granted the defence motion to permit giving testimony via video-conferencing in certain cases where defence witnesses cannot or will not travel to The Hague, subject to the necessary funding being available and proper technical and procedural arrangements being made. In the same Decision, the Trial Chamber also granted safe conduct (temporary immunity from arrest) for a number of defence witnesses.

41. More than 270 exhibits have been presented so far, in documentary, physical and electronic format. Exhibits are presented via personal monitors in the courtroom, thus enabling all parties to follow easily. The proceedings are recorded in English, French and Bosnian/Croatian/Serbian in simultaneous interpretation and a computer-assisted verbatim transcript is available for immediate reference.

(d) Other matters

42. On 1 September 1995, Judge Karibi-Whyte granted leave to the Prosecutor to amend the indictment against Tadić by adding additional charges of persecution and deportation in connection with incidents alleged to have occurred at Omarska, Keraterm, Trnopolje and Prijedor. The indictment was further amended in December 1995 in respect of these charges, pursuant to the Decision of the Trial Chamber on the defence motion challenging the form of the indictment, when the charge of deportation was withdrawn.

43. Prior to the commencement of the trial, a number of closed session status conferences were held with the parties to determine readiness for trial.

5. The Djukić case

44. Djordje Djukić made his first appearance before a Trial Chamber of the Tribunal, composed of Judges Jorda, Odio-Benito and Riad, on 1 March 1996 and pleaded not guilty. The accused filed several pre-trial motions. The Chamber issued a Decision on these motions on 26 April 1996. The defence had contended that the indictment against Djukić was invalid because the Prosecutor had not sought a deferral in the courts of Bosnia and Herzegovina of the proceedings against Djukić. The Chamber rejected this argument, ruling that it was up to the Prosecutor to assess the suitability and timing for submitting a proposal for deferral to the Chamber, but cautioning that the Prosecutor must take care not to place the defence in a position that might prejudice its rights. The defence also challenged the indictment for incompleteness and imprecision. The Chamber granted that the indictment was not sufficiently precise in alleging Djukić's involvement in the preparation or planning of the acts charged in the indictment. Finally, the accused requested the exclusion of certain evidence, including a statement made by him and items that had been found in his possession. This request was rejected.

45. On 19 April 1996, the Prosecutor filed a motion to withdraw the indictment against Djukić on the basis of the accused's rapidly deteriorating health as a result of cancer. The motion was initially filed before Judge Karibi-Whyte, the Judge who confirmed the indictment. He declined jurisdiction over the matter, holding that only the Trial Chamber now had jurisdiction. Accordingly the motion came before the Trial Chamber and at the hearing the defence contended that the indictment should be withdrawn for lack of evidence. The Trial Chamber rejected the Prosecutor's request for withdrawal, being of the view that the Tribunal's statute and rules did not authorize withdrawal of an indictment for health reasons. It also rejected the defence contention for withdrawal of the indictment. In the light of Djukić's medical condition, however, the Chamber ordered that he be provisionally released. The Prosecutor appealed the decisions of both Judge Karibi-Whyte and the Trial Chamber, but before the appeal could be heard, the accused died and the case was discontinued.

6. The Blaškić case

46. As stated, Tihofil Blaškić was indicted for the "ethnic cleansing" of the Lašva river valley area in central Bosnia during the period May 1992 to May 1993. He made his first appearance before a Chamber, composed of Judges Jorda, Odio-Benito and Riad, on 3 April 1996. The motions made thus far by General Blaškić relate to his detention.

7. The Čelebići camp case

47. The four accused named in the indictment alleging war crimes against Bosnian Serbs detained at the Čelebići camp in central Bosnia are all in the custody of the Tribunal. They have made their initial appearances before a Trial Chamber composed of Judges McDonald, Sidhwa and Vohrah, and have filed a number of pre-trial motions, including applications for provisional release by Delalić and Landžo.

8. The Erdemović case

48. Dražen Erdemović was a soldier in the 10th Sabotage Detachment of the Bosnian Serb army. This unit participated in the takeover of Srebrenica in July 1995. Erdemović is accused of having taken part in the summary execution of hundreds of unarmed, Bosnian Muslim civilian men at Pilica collective farm near the town of Zvornik on or about 16 July 1995. For his participation in these events, Erdemović was charged with crimes against humanity and, in the alternative, violating the laws and customs of war.

49. Erdemović made his first appearance before a Trial Chamber composed of Judges Jorda, Odio-Benito and Riad on 31 May 1996. At that time, he pleaded guilty to the charge of crimes against humanity. As part of the pre-sentencing procedure, the Chamber ordered psychological and psychiatric evaluations of the accused. Sentencing is scheduled for October 1996.

9. Rule 61 proceedings

50. In certain instances where the Tribunal has been unable to obtain custody of an accused, it has proceeded under rule 61 of its Rules of Procedure and Evidence. In proceedings under rule 61, a full Trial Chamber examines an indictment and the supporting evidence in public and, if it determines that there are reasonable grounds for believing that the accused committed any or all of the crimes charged, confirms the indictment and issues an international arrest warrant. The warrant is intended to ensure that the accused will be arrested if he crosses international borders. In addition, the Chamber may certify, upon proof by the Prosecutor, that the failure to effect personal service on the accused was due to the failure or refusal of a State to cooperate with the Tribunal. The President of the Tribunal, in consultation with the Presiding Judges of the Trial Chambers, may then notify the Security Council of such failure or refusal by a State. In the past year, the Tribunal has conducted the following rule 61 proceedings.

(a) Nikolić

51. On 9 October 1995, the Tribunal commenced its first proceeding under rule 61. The indictment against Dragan Nikolić, initially confirmed by Judge Odio-Benito in November 1994, was confirmed by Trial Chamber I, Judge Jorda presiding, and an international arrest warrant was issued and transmitted to all States. In addition, the Trial Chamber certified that the failure to effect service was due wholly to the failure or refusal of the Bosnian Serb administration in Pale to cooperate with the Tribunal and invited the President of the Tribunal to notify the Security Council accordingly. This was done on 30 October 1995.

52. The proceedings lasted for five days and 15 witnesses were called, including one expert and 13 eye-witnesses, many of whom were alleged victims. This was the first occasion on which witnesses had been called to the Tribunal and many sought and were granted measures of protection. In most cases this was limited to non-disclosure of addresses but one witness was granted confidentiality from the public. In this case, testimony was given in the

courtroom but with protective screening shielding the witness from view from the public gallery and with the televised image subject to voice and image distortion.

(b) Martić

53. On 25 July 1995, Judge Jorda confirmed an indictment against Milan Martić, the President of the self-proclaimed Republic of Serbian Krajina, for the shelling of the city of Zagreb on 2 and 3 May 1995. The indictment was accompanied by warrants of arrest and orders of transfer. On 13 February 1996, Judge Jorda asked the Prosecutor to report on his attempts to transmit the warrants and to effect service of the indictment. After having heard the Prosecutor and determining that the measures taken to transmit the arrest warrants and to serve Martić were reasonable, Judge Jorda ordered the indictment submitted to his Trial Chamber for review under rule 61.

54. The hearing was held on 27 February 1996. In addition to written evidence, the Prosecutor presented the live testimony of four witnesses. The witnesses described the prevailing military and political situation in Zagreb, the attacks on the city and the consequences of such attacks. In addition, a military expert testified about the features of the type of rocket used in the attack.

55. On 8 March 1996, the Trial Chamber issued a decision holding that there were reasonable grounds for believing that on 2 and 3 May 1995 the civilian population of Zagreb was attacked with Orkan rockets on orders from the accused and in contravention of the laws and customs of war. It further issued an international arrest warrant for Martić that was sent to all States and to IFOR.

(c) Vukovar

56. The rule 61 hearing of the Vukovar case was held on 20 and 26-28 March 1996. The Prosecutor provided the Chamber with written evidence and presented the testimony of several witnesses. These witnesses included persons who were in the hospital when it was captured, one person who escaped the alleged mass killing and a soldier of the Yugoslav People's Army (JNA) who took part in activities in the area.

57. On 3 April 1996, the Trial Chamber issued its decision, confirming that there were reasonable grounds for believing that the accused had committed the crimes charged. It further issued international arrest warrants for the accused. Finally, the Chamber held that the failure to execute the warrants of arrest could be ascribed to the refusal of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the Tribunal and so certified for the purposes of notifying the Security Council.

(d) Rajić

58. As noted earlier, on 29 August 1995, Judge Sidhwa confirmed an indictment against Ivica Rajić alleging an unlawful attack on the village of Stupni Do. On 6 March 1996, Judge Sidhwa asked the Prosecutor to report on his attempts to transmit the warrants and to effect service of the indictment. After having heard the Prosecutor and ascertained that he had taken all reasonable steps to

serve the accused and otherwise inform him of the existence of the indictment, Judge Sidhwa ordered the indictment submitted to his Trial Chamber for review under rule 61.

59. The Prosecutor submitted written evidence in support of the indictment and, on 2 and 3 April 1996, presented the testimony of five witnesses before the Trial Chamber composed of Judges McDonald, Sidhwa and Vohrah. The witnesses included United Nations Protection Force (UNPROFOR) personnel who were stationed in the area and who visited the village in the days after the attack.

60. On 29 April 1996, the Prosecutor filed an application to adjourn the Decision on the rule 61 proceedings against Rajić and for leave to file additional evidence to support the submission regarding the existence of an international armed conflict. This request was granted by the Chamber and a decision in the matter is expected in August 1996.

(e) Karadžić and Mladić

61. The two indictments against Karadžić and Mladić were joined for the purposes of the rule 61 hearing, which took place on 27 and 28 June, and 1-5 and 8 July 1996. A number of witnesses were called, including the former Mayor of Sarajevo, the accused Dražen Erdemović and a survivor of a massacre alleged to have occurred in Srebrenica in July 1995, as well as two amici curiae. The indictments were confirmed in a reasoned Decision dated 11 July 1996, which, among other things, dealt at length with the history of the conflict in Bosnia and Herzegovina and the rise of the Serbian Democratic Party there, and international warrants were issued for the arrest of Karadžić and Mladić. The Chamber also certified that the failure to execute the initial arrest warrants was due to the refusal of the Federal Republic of Yugoslavia (Serbia and Montenegro) and Republika Srpska to cooperate with the Tribunal. The President of the Tribunal sent a letter to this effect to the Security Council on 11 July 1996.

10. Amicus curiae

62. The Chambers of the Tribunal have received several requests from a variety of sources, including non-governmental organizations, corporations and States, for leave to appear as amicus curiae under rule 74 of the Rules of Procedure and Evidence.

63. In September 1995, the Appeals Chamber, in considering the appeal from the decision of the Trial Chamber regarding the Tribunal's jurisdiction in the Tadić case, granted leave to the association Juristes sans frontières to submit an amicus curiae brief on the issue of jurisdiction.

64. Shortly before the commencement of the Tadić trial, a request was filed by the Courtroom Television Network. The Network sought leave to appear as amicus curiae to oppose a defence motion to curtail press access to the trial in order to prevent the contamination of witness testimony. The Trial Chamber rejected this request, noting that the bulk of the defence motion had been denied and that there was no need for a formal submission on behalf of the

Courtroom Television Network because its views had been fully set forth in its letter requesting leave to appear as amicus curiae.

65. The Republic of Croatia filed a request on 30 April 1996 to appear as amicus curiae in all matters involving its responsibility, rights and legal interests. In particular, Croatia sought leave to be heard as amicus curiae in the rule 61 proceedings against Ivica Rajić with respect to the issue of the nature of the conflict in the former Yugoslavia. On 24 May 1996, the Trial Chamber before which the proceeding was pending rejected Croatia's request, without prejudice to its ability to renew it at the time of trial.

B. Regulatory activity

1. Amendments to the Rules of Procedure and Evidence

66. The Tribunal's Rules of Procedure and Evidence were adopted by the Judges at the end of their second plenary session in February 1994. As reported in the Tribunal's second annual report (1994-1995), the Rules were amended on a number of occasions for the reasons described therein (in short, the Rules constitute the first international criminal procedural and evidentiary code ever adopted, whose adoption was necessary because the statute itself was not sufficiently detailed to be a guide to the conduct of proceedings; since it was not possible at the outset to anticipate every eventuality which would arise, the Rules have been amended from time to time, by a plenary of the Judges, to take account of various eventualities). While the number of amendments has diminished in the last year, a few significant changes should be noted.

67. Two important amendments were adopted at the Tribunal's eighth plenary session, held in October 1995. Rule 70 was amended in order to allow the Prosecutor to use as evidence information provided to him on a confidential basis, while at the same time protecting the source by restricting the power of a Trial Chamber to order the source to produce additional evidence or to summon a representative of the source as a witness. At the initiative of the Judicial Department of the Registry, the Judges also adopted a new rule, rule 90 bis, which allows the Tribunal to obtain the transfer of a person who is required by the Tribunal as a witness and who has been detained in criminal proceedings in a State. As stated, this rule has been relied upon in several instances since its adoption.

68. At the Tribunal's ninth plenary session, the Judges decided to amend the Rules relating to arrest warrants (55 (B) and 59 bis). In addition, rule 61 was amended so as to allow the Judge who confirmed an indictment to invite the Prosecutor to report on the measures taken by him to serve the accused. This report may lead to an order by the Judge that the indictment be submitted to the Judge's Trial Chamber for rule 61 proceedings.

69. A further new rule was adopted at the Tribunal's tenth plenary session in April 1996. The newly adopted rule 40 bis gives the Prosecutor the authority to request an order from a Judge for the transfer and provisional detention of a suspect to the Detention Unit in The Hague. A regime governing the period of

such detention was prepared by the Registry, taking into account applicable international standards, and approved by the Judges.

70. At the eleventh plenary session, the Judges adopted amendments to rules 45, 53, 59 bis, 72 (B) and 100 and adopted a new rule (rule 45 bis). The amendments were not extensive. For example, the amendment to rule 45 now allows, in certain circumstances, counsel to be assigned to a suspect or accused who speaks neither of the two working languages of the Tribunal. On 5 July 1996, the Judges also adopted, unanimously, an amendment to rule 15 regarding the procedure to be adopted in the event of illness of a Judge or an unfilled vacancy in the Chambers.

2. Amendments to other Tribunal rules and regulations

71. In addition to the Rules of Procedure and Evidence, the Tribunal's affairs are regulated by a number of other sets of rules and regulations, such as the Rules of Detention and the Regulations for Detainees which set out the precepts regarding the detention of persons at the United Nations Detention Unit in The Hague. In addition, the Tribunal's Directive on the Assignment of Defence Counsel, which addresses issues relating to the appointment of counsel for indigent accused, was amended at the eleventh plenary session.

C. The need for a second courtroom

72. Given that the first trial of the Tribunal is under way and that two other trials are scheduled for this year, the need for a second courtroom at the Tribunal is becoming increasingly imperative. If, as is hoped, more accused will be delivered to the Tribunal, it may, nevertheless, not be possible to ensure prompt trials with the present facilities. The need for adequate funding to be provided for the construction of a second courtroom, for which ample space already exists at the Tribunal, cannot be overemphasized.

III. OFFICE OF THE PROSECUTOR

73. During the period under review, the Office of the Prosecutor continued to submit a number of indictments for confirmation - 11 in total, 10 of which are public. The confirmation of these indictments and the course of the proceedings following confirmation have, for convenience, been described in the "Chambers" section of the present report. A summary of the indictments issued to date is found in this section (paras. 88-97) and a complete list of indictees is provided in annex I to the report.

A. Impact of the Dayton Accord on the Office of the Prosecutor

74. The initialling of the Dayton Accord in November 1995 had a significant impact on the work of the Office of the Prosecutor. Although a memorandum of understanding regarding cooperation between the Republic of Bosnia and Herzegovina and the Tribunal had been signed on 3 December 1994 enabling the

establishment of a field office in Sarajevo, the lack of freedom of movement on the ground and the continuation of hostilities made it impossible to carry out the necessary preparatory work. Investigations had also been hampered, particularly in territory under Bosnian Serb control. The Dayton Accord and the subsequent introduction of the 60,000-strong IFOR created a new environment in which Tribunal investigators could work.

1. Relationship with IFOR

75. Recognizing the importance of establishing a productive working relationship with the IFOR Commander, Admiral Leighton Smith, the Prosecutor, Deputy Prosecutor and President of the Tribunal went to meet him in the former Yugoslavia in mid-January 1996. The issue of paramount importance was obtaining the assistance of IFOR personnel to ensure the security of investigation teams as they travelled and worked in areas in Republika Srpska. The Prosecutor and members of his staff also met, in Brussels, the Secretary-General of NATO and the Supreme Allied Commander in Europe to establish contacts and to begin discussing modalities of cooperation and assistance. IFOR agreed to assist the Tribunal, within the limits of its assigned principal tasks and available resources, and it has done so continuously throughout the year. The Tribunal is greatly indebted to IFOR personnel, without whose assistance many missions in the former Yugoslavia would not have been possible.

2. Memorandum of understanding between the Supreme Headquarters Allied Powers Europe and the Tribunal

76. IFOR has also been of invaluable assistance in the transfer of suspects and indictees from Bosnia and Herzegovina. On 9 May 1996, a memorandum of understanding between the Tribunal and the Supreme Headquarters Allied Powers Europe (SHAPE) was signed by both parties. The memorandum spelled out the practical arrangements for support to the Tribunal and the detention and transfer of indictees to the Tribunal.

3. Contacts with the Office of the High Representative for the Implementation of the Peace Agreement on Bosnia and Herzegovina

77. Throughout 1996, the Office of the Prosecutor has been represented at the coordination meetings of the High Representative, a forum which has been invaluable for establishing contacts and cooperation with the implementing organizations of the Dayton Accord.

4. Mass grave sites and exhumations

78. Following these initial contacts with IFOR, investigation teams ventured into or through areas under Bosnian Serb control to conduct investigations, gathering evidence and interviewing witnesses. One of the most important

opportunities afforded by increased freedom of movement was the ability to locate and gain access to mass grave sites.

79. Access to mass grave sites gave the Prosecutor the opportunity to integrate the evidence obtained from exhumations into his investigative strategy. Through forensic investigations, the Prosecutor could seek to corroborate witness testimony, recover evidence related to events covered by Tribunal indictments, document injuries and identify causes and dates of death. Planning for exhumations began in late 1995 and the first exhumations of mass graves began on 7 July 1996. The most difficult aspect to date in the exhumations projects has been to clear mines and "booby-traps" from sites and to prevent their redeployment when the areas are not being excavated. At the first exhumation site, at Cerska, near Srebrenica, 155 bodies were found, many with their hands and feet tied. The second site, exhumed in late July at Nova Kabasa, revealed fewer bodies, but again the bodies were found with hands tied. The Tribunal is grateful not only to IFOR but also to the United Nations Transition Office for the former Yugoslavia, the United Nations Transitional Authority in Eastern Slavonia, Baranja and Western Sirmium, the United Nations Mine Action Centre, and the Norwegian People's Aid and Physicians for Human Rights for their cooperation and assistance.

5. "Rules of the Road"

80. In Rome, on 18 February 1996, it was agreed by the parties to the Dayton Accord that persons, other than those already indicted by the Tribunal, may be arrested and detained for serious violations of international humanitarian law only pursuant to a previously issued order, warrant or indictment that has been reviewed and deemed consistent with international legal standards by the Tribunal. It was further agreed that procedures for expeditious decision-making by the Tribunal would be developed and would take effect immediately. The work emanating from the Agreement is referred to as the "Rules of the Road" project.

81. Following the Agreement, the Office of the Prosecutor was almost immediately requested by the Office of the High Representative to review 40 cases of individuals who were being held as prisoners of war or suspected war criminals by the parties to the Rome Agreement. The cases were reviewed and final determinations were reached in all of them. Of the 40 cases, 11 were found to contain evidence sufficiently in accordance with international legal standards for the national courts to continue to investigate and the remainder were found to contain insufficient evidence to continue the investigation or to be outside the scope of the review.

82. In the spring of 1996, the Government of the Republic of Bosnia and Herzegovina informed the Prosecutor that they had approximately 1,500 cases to be reviewed by the Office. The Republic of Croatia has submitted over 100 cases to the Prosecutor for review.

6. Expansion of the Sarajevo office

83. The field office in Sarajevo was originally conceived of as a small liaison office intended, among other things, to provide support to the investigation teams, to perform liaison functions with local and national Governments and organizations in the area and to provide expert legal advice on republican and federal law in the former Yugoslavia. Following the Dayton Accord, and the increased investigative activity in the region, the critical need for increased support for the investigation teams became immediately apparent. The Prosecutor decided to expand the Sarajevo office from 3 to 12 staff members, including investigators and analysts.

B. Changes in the organization of the Office of the Prosecutor

84. During the reporting period, the Office retained its current structure with only a few modifications in two areas: the creation of the Fugitive Intelligence Support Team and an increase in staff to handle evidence and information.

1. Fugitive Intelligence Support Team

85. The Team coordinates and assists in obtaining custody of persons accused by the Tribunal. It works through national police and investigative entities, such as domestic war crime units, organized crime squads, immigration offices, custom services and INTERPOL. It develops and maintains detailed files on each accused, and on particular suspects, and passes such information along to appropriate international and national investigative entities. The lead investigator of the Team also works with designated members of each investigation team to coordinate fugitive tracking and intelligence gathering and to guarantee that the apprehension of fugitives remains a priority for all teams.

2. Evidence and information handling

86. In the past year, as more investigations have been undertaken, the amount of documentation and evidence made available to the Tribunal has grown exponentially. It soon became evident that the Information and Records Section of the Office of the Prosecutor needed to be reorganized in order to improve the efficiency, reliability and accessibility of the information provided to investigators. The Section is responsible for receiving, processing and archiving all information, evidence and other material, including correspondence. It is also responsible for maintaining and developing a structured database - a vital tool for the use of investigators. The work is highly computerized and labour-intensive. The backlog of documentation which has accumulated, consisting of hundreds of thousands of pages, is being addressed by increasing the number of staff and making use of voluntary contributions.

3. Appointment of the new Prosecutor

87. On 29 February 1996, the Security Council, by its resolution 1047 (1996), appointed Mrs. Louise Arbour, of Canada, as the new Prosecutor of both the International Tribunal for the former Yugoslavia and the International Tribunal for Rwanda. Mrs. Arbour will take up her post upon the departure of Mr. Richard J. Goldstone on 1 October 1996.

C. Indictments

88. In total, 18 public indictments have been submitted by the Office of the Prosecutor and confirmed by the Judges of the Tribunal, with a total of 75 indictees. Those indictments may be placed in seven broad categories.

89. First, alleged offences relating to the destruction of the Croatian city of Vukovar by Yugoslav People's Army forces in November 1991, one of the earliest major events in the war in the former Yugoslavia (see the Vukovar indictment, which focuses on the alleged massacre of unarmed men following the fall of the town).

90. Second, alleged offences relating to the occupation of towns or villages in Bosnia and Herzegovina in 1992 by Bosnian Serb forces (the Bošanski Samać, Brčko, Foča indictments), and associated killings, rapes and inhumane acts, and/or the later concentration of Bosnian citizens in camps (the Tadić (Omarska, Keraterm and Trnopolje camps), Nikolić (Sušica camp), Omarska camp and Keraterm camp indictments).

91. Third, offences allegedly committed in a camp in which Serbs were detained in 1992 (the Čelebići indictment).

92. Fourth, offences allegedly committed during the 1993 war in which Bosnian Croat forces "ethnically cleansed" Bosnians from areas of Bosnia and Herzegovina, notably the Lašva river valley area (Kordić et al., Marinić and Kupreškić et al. indictments), as well as the village of Stupni Do (Rajić indictment).

93. Fifth, events in the formerly Serbian Krajina region of Croatia, which are involved in the Milan Martić indictment, namely the firing of Orkan rockets by Croatian Serbs into the centre of Zagreb in May 1995.

94. Sixth, the Bosnian Serb leadership, which is the focus of the first indictment against Karadžić and Mladić, and also involved the discontinued case of Djukić, focusing on the siege of Sarajevo.

95. Seventh, events surrounding the fall of Srebrenica, which are dealt with in the second Karadžić and Mladić indictment, as well as the Erdemović indictment.

96. To these 18 indictments must be added one which remains subject to an order for non-disclosure, giving a total of 19 indictments.

97. Of those 19 indictments, 8 were confirmed in the period covered by last year's report, and 11 this year. Of the 75 published indictees, 42 were indicted last year, and 33, of whom one, Djukić, is no longer living, were indicted this year. Two persons - Karadžić and Mladić - were also indicted a second time this year. The tables shown in annex I set out the 18 public indictments and the names of the indictees.

IV. THE REGISTRY

98. As referred to in the introduction to the present report, the Tribunal disposes of many different functions, a feature perhaps most marked in the Tribunal's Registry. The Registry, in addition to its court management functions, manages a legal aid system of assigning defence counsel to indigent accused, superintends a Detention Unit and maintains diplomatic contacts with States and embassies. It thus combines elements of the diverse roles played in a national system by a prisons service, legal aid board, court registry and diplomatic corps.

99. The Registry, which operates under the supervision of the Registrar and the Deputy Registrar, the latter being in charge of the Judicial Department, has adopted innovative approaches to its diverse tasks. The increasing workload of the Tribunal, owing to the delivery, surrender or transfer of a dozen or so detainees in the past six months, has shown the need to fine-tune the procedures developed and adopted in the first two years of the Tribunal's existence.

A. Judicial department

1. Court management

100. The Judicial Department's Court Management Division has been busily occupied with the large number of hearings which have taken place this year, principally in the Tadić case. The courtroom has been in use nearly every day this year, including through the summer season, and its technical equipment has been fully tested out and improved.

101. A Directive has been drafted for the Court Management and Support Services Unit. The draft text of the Directive was submitted to the Judges and the Prosecutor for comments on 22 December 1995. It was approved by the eleventh plenary on 25 June 1996.

102. The Court Management sub-unit is responsible for the administrative arrangements concerning courtroom hearings, including arranging for the distribution of documents, providing technical assistance and preparing minutes and records of Chambers' sittings, as required by rule 35 of the Rules of Procedure and Evidence. The sub-unit also files and distributes judgements, orders, requests, pleadings and other official documents of the Tribunal, and manages exhibits submitted during the parties in trial. At present, the sub-unit is staffed by one court deputy, one usher and one court record assistant, who also works in the Support Services sub-unit, with the assistance

of several of the legal assistants seconded by the European Union and working under the supervision of the Registrar and Deputy Registrar.

2. Support services

103. The Support Services sub-unit is responsible for providing administrative assistance to the Office of the Prosecutor and judicial support to the Chambers; serving as the channel of communication between the Tribunal and States and organizations; maintaining the archives of the Tribunal; keeping custody of the Tribunal's stamps and seals; ensuring the availability of information concerning the Tribunal to the public and maintaining the Record Book, pursuant to Rule 36 of the Rules of Procedure and Evidence, and a summary of judicial activities.

104. In addition to these functions, the Judicial Department makes preparations for plenary sessions and assists with advice and suggestions for amendments.

105. A duty system has been put in place in the Registry to ensure that there is always somebody available to cope with emergencies. At all times, both a law clerk and a legal officer are on duty and may be contacted by beeper. A vade mecum has been compiled as a guide to dealing with all exigencies which may occur outside of normal office hours. Consequently, court officers may be reached 24 hours a day, seven days a week, including holidays.

3. Defence counsel

106. The Tribunal's "legal aid" system is governed by the Directive on the Assignment of Defence Counsel (IT/73/REV.2). Although this Directive was adopted by the Tribunal on 11 February 1994, and amended on 5 May 1994, it only began to be fully applied recently, as more cases came before the Tribunal. It soon became evident that the text contained a number of shortcomings, the most notable being the failure formally to provide for the assignment of two counsel to an accused. In the Tadić and Djukić cases, it was clear that the assignment of a single advocate was insufficient to meet the demands placed on counsel. Accordingly, a number of amendments, including a provision for the assignment of co-counsel in exceptional circumstances, were submitted to the eleventh plenary session on 24 June 1996. Another notable proposal for amendment was one which would allow assignment of counsel to persons who were neither suspects nor accused, but detained witnesses transferred to the Tribunal under the provisions of rule 90 bis. In the Djukić, Krsmanović, Erdemović and Kremenović cases, counsel was assigned to detained witnesses.

107. The list of assigned counsel continues to lengthen, with 66 lawyers from 13 countries. Counsel assigned by the Tribunal to date are as follows: for Duško Tadić, Professor Wladimiroff and Mr. Orie, as well as a consultant, Mr. Kay, two investigators and one researcher; for Djordje Djukić, Messrs Vujin and Fila; for Aleksa Krsmanović, Professor Sjocrona, then Mr. Pantelić; for Radoslav Kremenović, Mr. Guberina; for Zdravko Mucić, Mr. Rhodes, QC, then Mr. Tapusković; for Goran Lajić, Mr. Fila; for Dražen Erdemović, Mr. Babić; for Hazim Delić, Mr. Karabdić; and for Esad Landžo, Mr. Braković.

108. Non-assigned (private) counsel are as follows: for Tihofil Blaškić, Mr. Hodak; and for Zejnil Delalić, Ms. Residović.

109. Practical experience in applying the Directive has also demonstrated the need to revise its financial provisions, both in order to provide adequate compensation to counsel and to conform with the United Nations financial requirements. A payment scale has been devised which respects the United Nations grades, is easy to apply, and represents a more realistic and adequate level of remuneration than that originally provided for by the Directive. The concept of taxation of legal costs has also been explored, but it has not so far been necessary to tax any claims beyond simple verification of invoices and receipts.

110. Since many defence lawyers hail from the former Yugoslavia, and are not, therefore, permanently resident in The Hague, adequate means of communicating and corresponding with counsel have had to be devised. Lockers have, therefore, been assigned to counsel for service of documents upon them when they are in The Hague, and for the filing of documents by counsel with the court. When counsel are not in The Hague, the usual means of communication is by facsimile; however, the quality of facsimile transmission in the former Yugoslavia is often poor, and this method of communication remains problematic.

111. Last year, the Registry published the Practitioner's Manual to orient counsel and provide them with information about the Tribunal, in terms of both procedure and protocol. This year, the Manual has been extensively revised and updated in the light of the experience of the first few counsel at the Tribunal. It is produced jointly in English and French by the Graphics Section of the Tribunal.

112. Facilities for defence counsel have improved over the last year. Two rooms adjacent to the courtroom have been allocated exclusively to defence counsel and are equipped with a computer, printer, fax machine and telephones. One of those rooms may be used by counsel to speak with their client during breaks in the hearings, as an alternative to interviewing him or her in the cells in the basement.

113. The Registry often has to deal with visa-related problems for counsel and family visitors to The Hague. While the Tribunal is not responsible for requesting that visas be issued by the Netherlands authorities, the Tribunal does keep the authorities informed of counsel assigned and, secondarily, of family members who may wish to travel to The Hague to visit a detainee.

4. Detention Unit

114. The United Nations Detention Unit has had an average population of some six persons in the past six months, in contrast to the single person detained last year. The rules and regulations governing detention have had, therefore, to be applied more often and to more varied situations and exigencies than last year.

115. The primary responsibility for managing the Detention Unit lies with the Commanding Officer. The Judicial Department of the Registry, however, has to

monitor correspondence with detainees, approve visits and deal with those complaints raised by the detainee with the Registrar or those which have been incapable of resolution at the Detention Unit.

116. The past year has also witnessed the first instances of modifying the conditions of detention (in the Blaškić case) and of granting provisional release, i.e. bail (in the Djukić case) under rules 64 and 65 of the Rules of Procedure and Evidence respectively.

117. Detainees have so far either been transferred to the Detention Unit by States (from Germany, Duško Tadić, Zejnil Delalić and Goran Lajić; from Austria, Zdravko Mucić; from Bosnia and Herzegovina, Djordje Djukić, Aleksa Krsmanović, Hazim Delić and Esad Landžo; from the Federal Republic of Yugoslavia (Serbia and Montenegro), Radoslav Kremenović and Dražen Erdemović) or have surrendered voluntarily (Tihofil Blaškić). IFOR of the Dayton Accord has so far not arrested anyone, although arrest warrants have been transmitted to it (see part two below, "Action by States").

5. Victims and Witnesses Unit

118. The Victims and Witnesses Unit, the first of its kind established by the United Nations to provide care, support and protection to witnesses testifying before the Tribunal, is now fully operational. Dozens of witnesses from many countries have been brought to The Hague by the Unit to appear in four hearings under rule 61 of the Rules of Procedure and Evidence as well as in the Tribunal's first trial against Duško Tadić, involving some 100 witnesses alone. The position of the Unit to protect victims and witnesses was strengthened by an amendment to rule 75 of the Rules of Procedure and Evidence, which enables the Unit, in addition to a witness or the parties concerned, to request a Judge or Trial Chamber to order appropriate measures for the privacy and protection of witnesses. The Unit provides its services impartially to witnesses for the prosecution as well as the defence, and observes strict confidentiality in its work.

119. The Unit now consists of, in addition to administrative staff, a Protection Officer, experienced in witness protection, and a Support Officer, who has a background in dealing with cases of sexual assault. Several Victims and Witness Unit assistants, who speak Bosnian/Croatian/Serbian but who are not themselves from the former Yugoslavia, provide support to witnesses on a 24-hour basis. The team's Coordinator supervises the support and protection programme.

120. In the first year of its existence, policies for support and protection of witnesses were put in place. Criteria have been established for the provision of child care, and the circumstances in which witnesses can bring a person with them to The Hague to support them. In order to ensure that witnesses are not financially penalized as a result of testifying at the Tribunal, the Unit prepared guidelines for the reimbursement of lost earnings, up to a predetermined maximum. In preparing its policy, the Unit scrutinized practices in many countries and took account of the economic situation in countries where many witnesses live, notably the former Yugoslavia.

121. The principles for the Unit's support work are the following: to respect, as much as possible, witnesses' freedom to make their own decisions (but within the restraints of the need to ensure their safety and security); to provide as much material and psychological support for them as possible from the moment they arrive in the Netherlands and, day and night, throughout their stay; to ensure that they are informed of the facilities available to protect them; to prepare them for trial by making them familiar with the place where they will give evidence; to arrange for specialist medical and psychological care but not to use these specialist services unless a witness asks for it; and to provide its support services commensurate with conditions for after-care prevailing in the home country.

122. These principles have now been fully translated into practice. Witnesses are informed about the support services they can expect through a leaflet, written in their own language, which they receive before travelling. They are escorted by Unit personnel from the moment of their arrival in the Netherlands, and are supported throughout their stay by people speaking their own language. Witnesses are shown the courtroom before they give testimony and can try out the translation equipment, which is explained to them. They are also shown the measures taken to conceal their visual image or hear the distortion of their voice if the Trial Chamber has directed such protective measures. Medical care is provided to them on request, and some witnesses with special needs have brought a relative to accompany them during their stay. Where possible, witnesses have been informed of the outcome of hearings in which they provided testimony. These facilities have been provided despite serious financial and other constraints which, initially, inhibited the speedy appointment of staff and provision of envisaged support services.

123. A range of measures have been taken to protect witnesses appearing before the Tribunal. In principle, trial proceedings are open to the public and are televised. However, several witnesses have asked, and the court has granted, that their visual image and voice be distorted so that they cannot be recognized by the general public. A remote witness room has been installed from which witnesses can give testimony by way of closed circuit television. This enables them to testify without having to see the accused while technical arrangements have been made enabling those in court (or the Judges alone) to see the witness while giving testimony. Certain of these protective measures were ordered by Trial Chamber II in the first trial, the Tadić case.

124. While witnesses are in the Netherlands, the Netherlands Government is responsible for their safety and the Unit liaises closely with the Government to provide the necessary data enabling it to take appropriate protective measures. So far, three witnesses have given testimony to the court in conditions of protected identity and the Unit has worked closely with several Governments, notably the Netherlands Government, to make appropriate arrangements for their protection before, during and after testimony. Several other witnesses, who have not yet testified, have requested protective measures and the Unit has ensured that appropriate measures were promptly taken by the appropriate authorities of the Governments concerned. However, with many more witnesses expressing concern for their safety in forthcoming trials, the Unit is concerned that a number of Governments which it has approached have failed to give the assurances requested that they will take the necessary measures to protect

witnesses, especially when these measures involve resettlement in a new country, possibly under a different identity.

125. The Unit continues to cooperate closely with non-governmental organizations which support its work by offering specialist care, legal expertise and support for witnesses once they have returned to their country of residence. The staff of the Unit have participated in conferences on trauma and male sexual assault and the Unit is widening its contacts with experts and others who can assist witnesses, stressing the need for impartiality and strict confidentiality in its work.

126. The Unit is encouraged by the feedback which it has received from witnesses who have testified in The Hague. Some of them said that, although worried at first, they experienced a great sense of relief after testifying, considering it a particularly important event in their life and appreciating the opportunity to have been able to do so.

B. Administration

1. Budget and finance

127. In March 1995, following the review by the Advisory Committee on Administrative and Budgetary Questions of the report of the Secretary-General on the financing of the Tribunal for the biennium 1994-1995 (A/C.5/49/42), the Advisory Committee issued a report (A/49/7/Add.12) containing its recommendations on the Secretary-General's proposals. On 20 July 1995, after much deliberation, the General Assembly, in its resolution 49/242 B, having considered the report of the Secretary-General and the related report of the Advisory Committee, decided to appropriate an amount of $39.1 million (net) to the Tribunal for the biennium 1994-1995. Adoption of this resolution included the approval to increase the authorized level of staff within the Tribunal from 108 to 258 posts.

128. The total expenditure of the Tribunal for the biennium 1994-1995 amounted to $35.8 million.

129. As of 31 December 1995, contributions and pledges totalling $6.3 million had been received by the Voluntary Fund to support the activities of the Tribunal. Furthermore, contributions in kind valued at approximately $2.5 million were also provided to the Tribunal in 1994-1995. These contributions included the donation of computer equipment by the Government of the United States of America valued at approximately $2.3 million, as well as donations of equipment from the United Kingdom of Great Britain and Northern Ireland ($31,700), the Open Society Institute ($105,000) and the Rockefeller Foundation ($50,000). The Government of France has also kindly provided the Tribunal with six vehicles, five to be used by the Sarajevo office of the Office of the Prosecutor.

130. In addition, contributions in the form of the loan of personnel have been received from a number of Member States including the United States (22 persons), Denmark (two), Finland (one), the Netherlands (three), Norway (two),

Sweden (three) and the United Kingdom (five). The Tribunal was also provided with the services of some 20 legal assistants who were seconded by the International Commission of Jurists through a grant made available by the Commission of the European Union.

131. In the autumn of 1995, in accordance with General Assembly resolution 49/242 B, the Secretary-General submitted a further report on the financing of the Tribunal (A/C.5/50/41) which contained his proposed requirements for 1996 which amounted to $40.8 million. In December 1995, the General Assembly decided to appropriate to the Tribunal an amount of $7.6 million (net) for the period from 1 January to 31 March 1996 to allow the Tribunal to continue its activities through 31 March 1996. In April 1996, the General Assembly authorized the Tribunal to incur additional expenditures of $7.6 million (net) until 30 June 1996. On 7 June 1996, the General Assembly adopted resolution 50/212 C and decided to appropriate an amount of $27.8 million (net) for the Tribunal for the period 1 April to 31 December 1996.

132. Hence, a total amount of $35.4 million was appropriated to the Tribunal for 1996.

2. Personnel

133. In 1995, the Personnel Section processed a total of 2,500 applications from various sources - evaluating applicants, checking references and offering appointments - and set up a database on candidates, evaluations and correspondence.

3. Translation

134. As the Tribunal has grown, so have the size and importance of the Conference and Language Services Section. The Section is responsible for both interpretation and translation services for the Registry, the Office of the Prosecutor, the Chambers and defence counsel. Simultaneous interpretation is provided not only from and into English and French, the official working languages of the Tribunal, but also from and into Bosnian/Croatian/Serbian. In addition, simultaneous interpretation of other languages is provided as required. The Section also sends interpreters into the field to work with the investigating teams on mission and is responsible for hiring French and English court reporters who prepare transcripts of all sessions in court.

135. The Section translates all kinds of written material and audio and video tapes from and into the official languages of the Tribunal, as well as Bosnian/Croatian/Serbian, German, Dutch and occasionally other languages. The material ranges from witness statements to the official documents of the Tribunal. In order to meet the requirements of such a significant workload sufficiently, the Section now numbers more than 25 full-time staff members and calls on the services of about 100 contractors.

4. General services

(a) Building management

136. The Building Management Unit of the General Services Section is currently responsible for the operation and maintenance of the Tribunal's office space, courtroom and facilities. In the beginning of 1997 the Unit will become responsible for the operation of the entire Aegon building in which the Tribunal is located, The Unit is also responsible for the 24-cell Detention Unit. In addition, the Unit provides support for three field offices, in Zagreb, Sarajevo and Belgrade.

137. The Building Management Unit is also responsible for the planning and supervision of repair and construction projects. For 1997, plans are being developed for the construction of a second courtroom and court facilities to accommodate the Tribunal's Appeals Chamber, the reconstruction of the cafeteria eating area, currently located in the space to be occupied by the second courtroom, living accommodation for 12 witnesses and building/security separation between the Tribunal and an anticipated sub-tenant.

138. When the landlord vacates the balance of the building in January 1997 it will no longer be responsible for the administration of the various maintenance service contracts or the catering contract. Administration of these services will become an added responsibility of the Building Management Unit.

(b) Travel

139. The Travel Unit of the Tribunal has in the past year continued to make travel arrangements for the many trips taken by Tribunal staff. Particular efforts were expended on organizing trips in the territory of the former Yugoslavia, especially field trips undertaken by the investigators of the Office of the Prosecutor.

5. Electronic support services

140. In the course of 1995, the Electronic Support Services and Communications Section equipped the courtroom with electronic facilities to support simultaneous translation during hearings into three languages, with the possibility of more languages if so required. A computerized exhibits system has been installed which allows parties rapidly to display documents or photographs on monitors built into each bench, saving the time normally needed physically to distribute exhibits and for the parties and judges to locate the correct page. The same system may be used to present video footage, computer-generated maps and interactive displays.

141. For reasons of security and confidentiality, representatives of the media are not permitted to enter the courtroom. The Tribunal, therefore, provides and makes available for broadcast, television coverage of public hearings. Following guidelines for the media established by the Judges in plenary session, the Section is responsible for the production of television signals and forward transmission to the media. All signals broadcast are subject to a 30-minute

delay, during which time sensitive material may be edited for publication on the orders of the Trial Chamber.

142. The computer support services unit of the Section has also installed and serviced local area networks (LANs) in both the Chambers/Registry and the Office of the Prosecutor.

143. The Section has continued to provide field support to the Tribunal in the territory of the former Yugoslavia, providing portable computers, scanning facilities, portable satellite communications and extensive video/photographic equipment.

6. Security

144. During the period under review, security has continued to be provided at the Tribunal, 24 hours a day, seven days a week, with officers staffing the security checkpoints within the Tribunal and escorting the accused and/or witnesses within its premises.

7. Library and reference

145. As a result of financial and logistical constraints, the library of the Tribunal became operational only late in 1995. Prior to that, jurists at the Tribunal made use of the other international law libraries in The Hague. The library serves as a documentation and research centre for the different organs of the Tribunal as well as for defence counsel.

146. The first few months of the library's existence were spent buying the necessary texts - an ongoing process - and equipping the library with basic infrastructure.

147. As the Tribunal did not immediately employ a librarian, staff from the different organs of the Tribunal were responsible for the maintenance of the library in the first few months of its operation. These staff members were temporarily assisted by some of the staff of the library of the International Court of Justice. A full-time librarian has now been employed.

148. Late in 1995, the Tribunal secured funding from the European Union to the sum of 500,000 Netherlands guilders towards further equipping the library.

149. In addition to the growing library holdings, Tribunal staff have access to Internet and to the on-line legal research service, LEXIS/NEXIS.

C. Press and Information Office

150. The Press and Information Office which was set up in June 1994, currently consists of a Press Section (two staff members and one legal assistant on loan) and of a Public Information Section (two staff members), both supervised by the Spokesman, Chief of the Press and Information Office.

151. Over the past year, the Tribunal's activities have been the subject of constant and increasing press coverage and of growing public interest.

1. Press coverage

152. The constant and increasing press coverage reflects (a) the continued development of the activities of the Press Section; and (b) a major shift in the media's perception of the Tribunal.

(a) Activities of the Press Section

153. A comprehensive network of media contacts has been established, the Office having created a database of 338 media organizations which are kept abreast of the Tribunal's activities and which report on its work at regular intervals. In addition to this periodic coverage by the majority of news media, the Tribunal's daily activities are covered by a core of news organizations with a wide scope or well-established influence: all international press agencies, some international suppliers of television footage and many of the quality newspapers. Regular coverage of the Tribunal's activities has also been stimulated by the holding of a weekly press-briefing (every Tuesday at 11 a.m.) by the Spokesman.

154. The Tribunal would have been much less in the limelight without the substantial development of its activities in terms of both judicial action (for example, 10 public indictments, 5 rule 61 proceedings, the commencement of the first trial, the diplomatic involvement of the President) and the pressure of external events (for example, the Dayton Accord, the Rome Agreement, the deployment of IFOR, the arrest of more accused, elections in Bosnia and Herzegovina). The increased number of press releases or statements attests to the Tribunal's growing media profile: 80 press releases have been issued since the beginning of this year.

155. The media policy of the Office helped ensure a large press attendance at the opening day of the Tadić trial: some 390 journalists from 198 news organizations and representing 32 different countries covered this event. They reported it mainly as the promising beginning of a judicial body whose shortcomings were clear but whose seriousness and determination were no longer in question.

(b) Shift in the perception of the Tribunal

156. Beyond the figures, the case for the Tribunal has become substantively stronger during the period considered: "The world needs the precedent being set at the Hague" wrote the Christian Science Monitor (United States) in May 1996. According to the Irish Times (May 1996): "The Tribunal needs unequivocal support". In contrast, one year before, the Tribunal was often described as an "alibi" or an "exercise in hypocrisy and in cautious half steps" by the world's press.

157. This dramatic shift in the perception of the Tribunal is most clearly reflected in the change of tone in the editorials devoted to it by the French

daily Le Monde. One of the most sceptical among the influential opinion-makers, Le Monde merely took note of the indictment of Ratko Mladić and Radovan Karadžić in July 1995. Later, however, in a synopsis of that month's main news stories, it referred to their indictment as "a turning-point". In the following six-month period, Le Monde reported on the Tribunal's activities regularly although, in its analysis of the Dayton Accord, it made no reference to the Tribunal: at that time it considered that, as one of its columnists later wrote, "the logic of the diplomats is opposed to the logic of the judges".

158. Significantly, this attitude changed with time. In February 1996, presenting its first interview with the Prosecutor, Le Monde wrote that "the Tribunal has established its credibility by indicting more than 50 persons ...". But, by the same token, the author moderated this positive attitude by speculating that "the Tribunal will never get hold of its major accused".

159. Later, the day after the opening of the Tadić trial, in an editorial symbolically entitled, "From Nuremberg to the Hague", Le Monde wrote: "that this trial could begin is an initial victory: a higher law, that of mankind, defeats cynical realism ... A beginning of justice may not yet be justice but it shows the way".

160. Following this line, Le Monde gave in-depth coverage to the Karadžić and Mladić rule 61 hearing, publishing three full pages in advance of the hearing and articles on a daily basis, and concluding with the editorial "The memory of Srebrenica". Its anonymous author wrote: "The ICTY is keeping alive in our consciousness a demand for justice which could otherwise be forgotten".

2. Public interest

161. A side-effect of this increased media coverage has been the enhanced interest of a growing number of specialized observers, for whom specific services have been designed.

(a) Specialized observers

162. Having been fully staffed as of July 1995, the Public Information Section has identified almost 700 specialized observers, and has organized a database which consists of: 560 universities, governmental and non-governmental organizations, ministries or individuals, of whom 235 request information regularly; 86 embassies in The Hague; 30 individual lawyers or academics (in addition to those belonging to previously mentioned organizations); and 18 United Nations Information Centres in Europe.

163. This list is still growing and it should also be noted that the Public Information Section has set up, from September 1995 to April 1996, a total of 16 visits to the Tribunal by groups ranging in size from 7 to 60 persons. This activity was reduced after the first term of 1996 because public hearings have made the public gallery unavailable.

(b) Specific services

164. In order to meet the demands of an ever-more curious public, in 1995, the Press and Information Office designed and launched a fully bilingual monthly, Bulletin, which is automatically mailed to all its contacts outside the press world. Factual and informative, as opposed to literary or propagandist, this publication has been well received: all of the six issues published so far have been reprinted, and its increased dissemination is expected to stimulate interest in the Tribunal's work.

165. Moreover, in order to address specific needs or requests, the Public Information Section has arranged for some services to be tailor-made:

(a) The United Nations Information Centres have received an information package on the Tribunal, updated monthly;

(b) Embassies in The Hague are faxed all press releases at the time of issuance to the media. In the past, they had also received a weekly list of all the documents made public in the previous days, but the failure of the majority to collect the packages has meant that this service has now been discontinued. However, the Bulletin lists the documents which are available upon request;

(c) Lastly, a Tribunal home page has been posted on the Internet under the United Nations address. Good progress has been made on this project, which it is hoped will be fully operational before the end of the year, so that official documents of the Tribunal will be readily available in electronic form.

Part two

ACTION BY STATES

V. DAYTON ACCORD

166. The Dayton Accord, signed in Paris on 14 December 1995 contains several provisions which refer specifically to the Tribunal. By signing the Accord, the parties thereto, the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Federation of Bosnia and Herzegovina and Republika Srpska, have formally recognized the Tribunal and undertaken to cooperate with it, both in general terms (see article X of annex 1-A and article IV of annex 9), and, specifically, to allow freedom of movement and provide unrestricted access to sites and persons, and to exclude indictees from public office.

167. The degree of cooperation encountered has varied remarkably among these States and Entities. The Republic of Bosnia and Herzegovina has been by far the most cooperative party: it has replied to nearly every warrant addressed to it, explaining its inability to execute arrest warrants in Bosnian territories outside its control, and is one of the two parties to date which has executed arrest warrants addressed to it, namely the warrants against Delić and Landžo. These arrests were important events in the history of State cooperation with the Tribunal. The Republic of Bosnia and Herzegovina has also allowed an office to

be established in Sarajevo and has provided Tribunal investigators with access to sites and persons.

168. On the other end of the spectrum, Republika Srpska has failed to execute any of the scores of arrest warrants which have been addressed to it, or to explain its inability or failure to do so, as required by the Tribunal's rules. More troubling is the fact that two indictees - Radovan Karadžić and Ratko Mladić - who have each been twice indicted by the Tribunal, inter alia, for genocide, not only have not been arrested but have remained (or still remain, in the case of Mladić) in official positions, contrary to the express terms of the Dayton Accord. The only cooperation of Republika Srpska with the Tribunal evinced to date has been allowing Tribunal investigators access to sites, notably mass grave sites. At the same time, however, there are numerous media reports that such sites have been emptied of corpses or otherwise tampered with, which would constitute destruction of evidence.

169. The Federal Republic of Yugoslavia (Serbia and Montenegro) has an almost equally dismal record of cooperation with the Tribunal. It is to be noted that under the Dayton Accord, the Federal Republic of Yugoslavia (Serbia and Montenegro) is responsible for Republika Srpska's cooperation and compliance as well as its own. In the first instance, Republika Srpska's defaults are therefore by extension defaults of the Federal Republic of Yugoslavia (Serbia and Montenegro). As regards its own compliance with the Dayton Accord, the Federal Republic of Yugoslavia (Serbia and Montenegro) has transferred two detained witnesses to the Tribunal (and deferred to the Tribunal's competence in respect of one who was subsequently indicted). Furthermore, it has formally allowed the Office of the Prosecutor to open an office in Belgrade (although for practical reasons the office has not yet opened). It has, however, failed to arrest any indictees in its territory and has further allowed prominent indictees, notably Ratko Mladić and Veselin Šljivancanin, to appear publicly in Belgrade with impunity. The Federal Republic of Yugoslavia (Serbia and Montenegro) has also failed to take the most elementary step of enacting implementing legislation to enable it to cooperate with the Tribunal, as required by the Tribunal's statute and international law.

170. Similarly, the Federation of Bosnia and Herzegovina, as distinct from the Republic of Bosnia and Herzegovina of which it is an Entity, has failed to pass any implementing legislation or to implement the legislation enacted by the Republic of Bosnia and Herzegovina, and has not arrested any indictees.

171. The Republic of Croatia occupies a middle rung in this ladder of cooperation. It recently enacted a law on cooperation with the Tribunal, which, however, has the undesirable feature of reserving a certain amount of discretionary power in executive organs. It has arrested one accused in its territory, Zlatko Aleksovski. A Bosnian Croat indictee, Tihofil Blaškić, has surrendered to the Tribunal of his own accord through the mediation of the Republic of Croatia. The Republic of Croatia has, however, failed to exercise its acknowledged authority and influence over other Bosnian Croats with a view to effecting their apprehension. Furthermore, so far it has failed fully to investigate and prosecute serious violations of international humanitarian law allegedly committed by Croatian forces in August 1995 during and after "Operation Storm".

VI. CONTACTS OF THE TRIBUNAL'S PRESIDENT WITH GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

172. As is well known, the Tribunal lacks any police or other enforcement agency of its own; consequently, it needs to rely upon the cooperation of States for the arrest and delivery of indictees. In this respect, the signing of the Dayton Accord marked a watershed. As stated above, the Accord not only restates the obligation of States to cooperate with the Tribunal, but it also extends this obligation to non-State entities (Republika Srpska and the Federation of Bosnia and Herzegovina); in addition, the Accord specifies and spells out that obligation and also puts in place a complex military and civilian enforcement mechanism designed to monitor the implementation of the Accord, including the provisions on cooperation with the Tribunal.

173. The new impetus given by the Accord to the Tribunal's activity made it advisable for the Tribunal to verify whether the parties thereto were prepared to comply with their obligations concerning the Tribunal and to what extent they were in fact living up to these obligations. The Tribunal's President, Antonio Cassese, therefore decided to meet foreign ministers and justice ministers of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), as well as those of the Federation of Bosnia and Herzegovina (in the light of the persistent refusal of Republika Srpska to even recognize the Tribunal, at that stage it was felt inappropriate to try to meet its ministers of justice and foreign affairs; however, a meeting did take place in late July 1996 in The Hague between the Minister and Deputy Minister of Justice of Republika Srpska and officials of the Tribunal, at which, unfortunately, the Republika Srpska representatives insisted that the Dayton Accord barred them from delivering accused to the Tribunal until after the elections in Bosnia and Herzegovina, scheduled for September 1996, had taken place). President Cassese met these Ministers and other senior officials in January and in May-June 1996. The purpose of these meetings was twofold: (1) to discover what measures the States or Entities were putting in place to observe their obligations, and (2) to call on them to fulfil these obligations.

174. The President also deemed it appropriate to contact the authorities responsible for the implementation of the Dayton Accord. To this end he met the Secretary General of NATO, Mr. Solana, and the NATO Supreme Commander, General Joulwan, as well as the Commander of IFOR, Admiral Leighton Smith. In addition, President Cassese met the High Representative, Mr. Carl Bildt and his deputy, Ambassador Steiner. He also met the President of the Organization for Security and Cooperation in Europe (OSCE), the Foreign Minister of Switzerland, Flavio Cotti, as well as the Head of the OSCE mission in Sarajevo, Ambassador Frowick.

175. Meetings with the relevant ministers of the Contact Group countries also proved essential to impress upon them the need for the States of the former Yugoslavia to enhance their cooperation with the Tribunal, in particular to take measures designed to ensure full assistance to the Prosecutor, and the prompt execution of the Tribunal's orders, requests and arrest warrants. President Cassese thus met the Foreign Ministers and the Justice Ministers of France, the Russian Federation, the United Kingdom and Germany. As for the United States,

meetings were held with Under-Secretary of State Mr. Tarnoff, as well as senior officials of the State Department. Another purpose of these meetings was for President Cassese to request secondment of personnel, and logistical as well as financial support to the Tribunal.

176. Furthermore, the President considered it opportune to meet the relevant bodies of two European organizations which are directly interested or involved in the situation in the former Yugoslavia: the European Union and the Council of Europe. The purpose of these meetings was to draw the attention of the relevant bodies to the need to call upon the States of the former Yugoslavia to comply with their international obligations and cooperate with the Tribunal.

177. As for the European Union, President Cassese met the President of the European Council, the then Italian Foreign Minister, Mrs. Agnelli, as well as the President of the European Commission, Mr. Santer, and Commissioners van der Broek and Bonino. He subsequently addressed the 15 foreign ministers meeting in the General Council in Brussels.

178. With regard to the Council of Europe, in April 1996 President Cassese addressed the Parliamentary Assembly in Strasbourg on the implementation of the Dayton Accord four months after its signature, held meetings with the Deputy Secretary General, and exchanged letters with the Secretary General.

179. Subsequently, President Cassese addressed the Mid-term Conference on the Implementation of the Dayton Accord (Florence, 13-14 June 1996), attended by 49 States and 16 international organizations.

180. On 26 June 1996, in an informal meeting, the Tribunal's President briefed the United Nations Security Council on the degree of cooperation of the various States and Entities of the former Yugoslavia with the Tribunal and the steps he had undertaken with a view to enhancing such cooperation.

VII. ENACTMENT OF IMPLEMENTING LEGISLATION

181. The Tribunal relies heavily for its daily operations not just on the cooperation of States of the former Yugoslavia but on all States and it proceeds under the assumption that States will provide their full and unreserved support. Given this great reliance on national action, the adoption by States of the legislative, administrative and judicial measures necessary for the expeditious implementation of the Tribunal's orders is of crucial importance. Such measures are mandatory under Security Council resolution 827 (1993) of 25 May 1993, which requires "all States" to "cooperate fully" with the Tribunal and its organs and stipulates that all States "shall take any measures necessary under their domestic law to implement the provisions" of the Tribunal's statute and comply with "requests for assistance or orders issued by a Trial Chamber" (para. 4). The statute establishes in article 29 the principle of cooperation between States and the Tribunal "in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law". Rule 58 restates this principle and confirms that the obligations on States stemming from the Statute "shall prevail over any legal impediment to the surrender or transfer of the accused to the Tribunal ...".

182. Over the course of the last year President Cassese has written to several States regarding their enactment of implementing legislation. In addition, on 25 March 1996, he issued a memorandum on the obligation of States to pass legislation implementing the Tribunal's statute. In that memorandum, the President noted that certain States were claiming that they could not arrest and surrender indictees to the Tribunal because of their lack of domestic legislation implementing the Tribunal's Statute. The President emphasized that - in the light of Security Council resolution 827 (1993), which imposed on States the obligation to enact implementing legislation, as well as customary international law - the lack of national legislation was no excuse for a breach of the international legal obligations of States.

183. As of August 1995, the date of the Tribunal's second annual report, 13 States (Australia, the Republic of Bosnia and Herzegovina, Denmark, Finland, France, Germany, Iceland, Italy, Netherlands, New Zealand, Norway, Spain and Sweden) had enacted implementing legislation. Since then, seven additional States - Austria, Belgium, the Republic of Croatia, Hungary, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America - have enacted such legislation.

184. The Republic of Korea, the Russian Federation, Singapore and Venezuela have indicated that they do not require implementing legislation to carry out their responsibilities. In addition, the following States have indicated their intention to adopt implementing legislation in the near future: Canada, Luxembourg, Poland, Romania, the Slovak Republic, Slovenia, Sri Lanka and Turkey.

185. Unfortunately, other States have continued to refuse cooperation on the grounds of their national legislation and/or failed to enact such legislation as would make cooperation a possibility. Examples include the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republic of Cyprus.

VIII. ENFORCEMENT OF SENTENCES

186. Article 27 of the Tribunal's statute prescribes that sentences of imprisonment imposed by the Tribunal on a convicted person be served in a State designated by the Tribunal from a list of States that have indicated to the Security Council their willingness to accept such persons.

187. In the report on the statute of the Tribunal presented by the Secretary-General to the Security Council (S/25704 and Corr.1 and Add.1), it was suggested that the Security Council make appropriate arrangements to obtain from States an indication of their willingness to accept convicted persons. This information would be communicated to the Registrar of the Tribunal, who would prepare a list of States in which the enforcement of sentences would be carried out.

188. Several efforts have been made to obtain indications from States of their willingness to accept convicted persons. On 4 October 1994, the Secretary-General, as a result of a request for assistance from the Security Council, sent a note inviting all States Members of the United Nations (and Switzerland) to

indicate whether they would be prepared to carry out the enforcement of prison sentences pursuant to article 27 of the Statute of the Tribunal. The President of the Tribunal, in consultation with the United Nations Office of Legal Affairs, decided to send a second letter, which was dispatched on 7 December 1994, to the representatives of 35 States. Because of the weak response to this request, the President sent a follow-up letter (based on a draft approved at the Tribunal's fifth plenary session) to States in February 1995. This letter proposed a less taxing commitment on the part of States. They were asked to consider options whereby the commitment would either be limited in time or by the number of prisoners per year. The response to the new request has also been quite negative.

189. Thus far, only six States have agreed without reservation to imprison persons convicted by the Tribunal: the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Islamic Republic of Iran, Finland, Norway and Pakistan. An additional five States have agreed to accept prisoners with reservations (e.g., only if their own nationals or residents were convicted). These States are Denmark, Germany, the Netherlands, Spain and Sweden.

190. Ten States have indicated that they are not in a position to accept prisoners: the Bahamas, Belarus, Belize, Burkina Faso, Ecuador, France, Liechtenstein, Malaysia, Poland and Slovenia.

191. Given that the Tribunal's first trial has started and five additional accused await trial at the Detention Unit in The Hague, not to mention one accused who has pleaded guilty and is awaiting sentencing, there is an urgent need for prison facilities for the enforcement of any sentences handed down by the Tribunal.

IX. VOLUNTARY CONTRIBUTIONS

A. States

1. Cooperation of the host State

192. Since its establishment, the Tribunal has received continuous support from the authorities in the Netherlands, in particular the Ministry of Foreign Affairs, the Ministry of Public Health, Welfare and Sports, the Ministry of Interior, the Netherlands Federal Building Service, and the Ministry of Justice, as described in the Tribunal's second annual report (paras. 140-145). This support has continued and intensified with the increased judicial activity of this year. The Tribunal acknowledges the considerable financial burden imposed by these activities and would like to take this opportunity to express its deep gratitude to the various Netherlands ministries for their invaluable assistance and support.

2. Seconded personnel

193. Several States have contributed assistance to the Tribunal in the form of a loan of personnel to the Office of the Prosecutor, as described in the budget and finance section of this report.

3. Monetary contributions and contributions in kind

194. In its resolution 47/235 of 14 September 1993, the General Assembly invited Member States and other interested parties to make voluntary contributions to the Tribunal in cash and in the form of services and supplies acceptable to the Secretary-General. Such contributions are also mentioned in the section on budget and finance of the present report.

B. European Union

195. The European Union has continued to make an invaluable contribution to the work of the Tribunal by providing financial resources for several projects of non-governmental organizations that aim to assist the work of the Tribunal. These projects include the secondment of 20 legal assistants (up from 15 last year) to the Registry and Judges for research and legal support, which has proved of crucial value to the substantive work of the Tribunal. The Judicial Department of the Registry is staffed almost entirely by these legal assistants, working under the direction of the Deputy Registrar. Given the daily activity, it would be practically impossible for it to fulfil its tasks without the contribution of the legal assistants.

196. Another significant contribution of the European Union involves the donation of funds, through the offices of the International Rehabilitation Council for Torture Victims in Denmark, to the Victims and Witnesses Unit. Those funds have been used to pay for a 24-hour a day, live-in Witness Assistant Programme based at the location where witnesses stay in The Hague. Funds have also been applied towards payment of a specialist trauma consultant.

197. Another very important project sponsored by the European Union involves a substantial contribution to the Tribunal's library, as described in paragraph 148 above. This project is in the process of being finalized.

198. The Tribunal gratefully acknowledges the extraordinary support and assistance provided by the European Union, which has been demonstrated from a very early stage and has continued unstintingly.

Part three

X. CONCLUSION

199. The past year has seen the Tribunal take positive strides forward, tempered by the uneven cooperation which it has received from States and Entities of the

former Yugoslavia and which, by the same token, tempers progress towards a new era of international implementation of humanitarian law.

200. The principal markers of the Tribunal's advance over the past 12 months are (1) the first trial at the Tribunal has commenced; (2) two other trials are at the pre-trial phase, with the trials proper due to start later this year; (3) the first guilty plea has been entered and accepted by the Tribunal; as a consequence, before the end of the year sentencing proceedings will be held and a sentence delivered; (4) the Chambers have dealt with other miscellaneous cases involving several detainees - Djukić, Krsmanović, Kremenović, Lajić - which did not reach the trial stage, but which posed a number of challenges and put many different aspects of the Tribunal's Rules of Procedure and Evidence to the test; (5) rule 61 proceedings have been held in five cases; as a result, the charges and evidence against the accused in those cases have been made public, international arrest warrants have been issued and, in most of these cases, a report has been made to the Security Council that the failure to execute the warrants was due to the non-compliance of one or other State or Entity; and (6) the Appeals Chamber has ruled on a number of important legal issues such as the legality of the establishment of the Tribunal and its subject-matter jurisdiction.

201. From all of the above it can be seen that the entire normative and logistical infrastructure which was assembled in the first two years of the Tribunal's existence has now been put into operation and thoroughly tested. The Tribunal's provisions regarding detention and provisional release have been applied for the first time, as well as the rules on sentencing, not to mention regulatory texts regarding assignment of counsel, handling of exhibits and many other matters. Equally the courtroom facilities have been satisfactorily employed for the first trial. As described in the introduction to the present report, the functions of the Tribunal comprise many diverse elements not traditionally associated with a criminal court. That the infrastructure has so far not been found significantly wanting in any of these areas is a notable accomplishment in itself.

202. Equally notable is the fact that the Tribunal's existence has, in the past year, prompted various States, including Austria, Croatia and Hungary, to pass implementing legislation formalizing cooperation with the Tribunal.

203. The Tribunal, however, still depends heavily on State cooperation to discharge its mandate, and without the cooperation of some of the States or Entities of the former Yugoslavia (notably the Federal Republic of Yugoslavia (Serbia and Montenegro), which is only cooperating to a limited extent and not in the crucial areas, and Republika Srpska, which is failing to cooperate even minimally), the arrest and transfer of major indictees, notably Karadžić, Mladić and Kordić, are a forlorn hope. Croatia, while it is cooperating in part, must nevertheless exercise its acknowledged authority and influence over Bosnian Croats to effect the arrest of indictees such as Kordić and Rajić.

204. The international community must also remain vigilant against a particularly dangerous proposal emanating from the Federal Republic of Yugoslavia (Serbia and Montenegro) and Republika Srpska, namely to try those persons already accused by the Tribunal in those territories, and, by that

token, to refuse to surrender them to the Tribunal. Such a manoeuvre, recalling the spectre of the Leipzig trials of 1920-1922, could violate the Tribunal's primacy, infringing both Security Council resolutions and the Dayton Accord. The Leipzig trials cast a long shadow of impunity over this century - an impunity that is the very antithesis of the ideal of international justice which the Tribunal has been established to promote.

205. The aim of the establishment of this Tribunal by the Security Council is to bring to justice the persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia for the final purpose of restoring and maintaining international peace and security. The persistent illegal refusal of certain States to surrender indictees for trial could certainly defeat the aim of the Security Council and rekindle the fire extinguished by the Dayton Accord. It is suggested that for the sake of international peace and justice such illegal conduct should not continue to be tolerated and appropriate action should be taken to compel States reneging on their international obligations, to support the Tribunal. In the words of the former Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, Mr. Tadeusz Mazowiecki, "the very stability of international order and the principle of civilization is at stake over the question of Bosnia" (E/CN.4/1996/9, annex I).

Annex I

LIST OF INDICTMENTS

The present annex provides, first of all, the list of indictments confirmed prior to the period covered by this report, i.e. August 1995-August 1996; this list did not appear in previous annual reports.

The symbols used bear the following meaning:

g.: grave breaches of the Geneva Conventions of 1949 (article 2 of the Tribunal's statute)

v.: violations of the laws or customs of war (article 3 of the Tribunal's statute)

gen.: genocide (article 4 of the Tribunal's statute)

c.: crimes against humanity (article 5 of the Tribunal's statute)

in bold type: accused in another indictment

Date of confirmation	Indictment
4 Nov. 1994:	IT-94-2-R61. (Sušica camp) Dragan Nikolić: g., v., c.
13 Feb. 1995:	IT-95-4-I: (Omarska camp) Željko Meakić: g., v., gen., c. Miroslav Kvočka: g., v., c. Dragoljub Prcać: g., v., c. Mladen Radić: g., v., c. Milojica Kos: g., v., c. Momčilo Gruban: g., v., c. Zdravko Govedarica: g., v., c. Gruban: g., v., c. Predrag Kostić: g., v., c. Nedeljko Paspalj: g., v., c. Milan Pavlić: g., v., c. Milutin Popović: g., v., c. Draženko Predojević: g., v., c. Željko Savić: g., v., c. Mirko Babić: g., v., c. **Nikica Janjić**: g., v., c.) See also **Dušan Knežević**: g., v., c.) 21 July 1995 **Dragomir Šaponja**: g., v., c.) (Keraterm camp) **Zoeran Žigić**: g., v., c.)

Date of confirmation	Indictment
13 Feb. 1995:	IT-94-1-T/IT-94-3-I: Dusko Tadić: g., v., c. Goran Borovnica: g., v., c.
21 July 1995:	IT-95-8-I: (Keraterm camp) Duško Sikirica: g., v., gen., c. Damir Došen: g., v., c. Dragan Fuštar: g., v., c. Dragan Kulundžija: g., v., c. Nenad Banović: g., v., c. Predrag Banović: g., v., c. Goran Lajić: g., v., c. Dragan Kondić: g., v., c. **Nikica Janjić**: g., v., c.)See also **Dušan Knežević**: g., v., c.)13 Feb. 1995 **Dragomir Šaponja**: g., v., c.)(Omarska camp) **Zoran Žigić**: g., v., c.) Nedjeljko Timarac: g., v., c.
21 July 1995:	IT-95-9-I: (Bošanski Samać) Slobodan Miljković: g., v., c. Blagoje Simić: g., v., c. Milan Simić: g., v., c. Miroslav Tadić: g., c. Stevan Todorović: g., v., c. Simo Zarić: g., c.
21 July 1995:	IT-95-10-I: (Brćko) Goran Jelisić: g., v., gen., c. Ranko Češić: g., v., c.
25 July 1995:	IT-95-11-R61: Milan Martić: v.
25 July 1995:	IT-95-5-R61: Radovan Karadžić: g., v., gen., c.) See also Ratko Mladić: g., v., gen., c.) 16 Nov. 1995 (Srebrenica)

The following is the list of indictments confirmed in the period August 1995-August 1996:

Date of confirmation	Indictment
29 Aug. 1995:	IT-95-12-R61 (Stupni Do) Ivica Rajić: g., v.
7 Nov. 1995:	IT-95-13-R61 (Vukovar) Mile Mrkšic: g., v., c. Miroslav Radić: g., v., c. Veselin Šljivančanin: g., v., c.

Date of confirmation	Indictment
10 Nov. 1995:	IT-95-14-I (Lašva river valley) Dario Kordić: g., v., c. Tihofil Blaškić: g., v., c. Mario Ćerkez: g., v. Ivan Santić: g., v. Pero Skopljak: g., v. Zlatko Aleksovski: g., v.
10 Nov. 1995:	IT-95-15-I (Lašva river valley) Zoran Marinić: g., v.
10 Nov. 1995:	IT-95-16-I (Lašva river valley) Zoran Kupreškić: g., v. Mirjan Kupreškić: g., v. Vlatko Kupreškić: g., v. Vladimir Santić: g., v. Stipo Alilović: g., v. Drago Josipović: g., v. Marinko Katava: g., v. Dragan Papić: g., v.
16 Nov. 1995:	IT-95-18-R61 (Srebrenica) **Radovan Karadžić**: v., gen., c.) See also **Ratko Mladić**: v., gen., c.) 25 July 1995) IT-95-5-R61
29 Feb. 1996:	IT-96-20-T. (discontinued because of the death of the accused) Djordje Djukić: v, c.
21 Mar. 1996:	IT-96-21-T. (Čelebići camp) Zejnil Delalić: g., v. Zdravko Mucić: g., v. Hazim Delić: g., v. Esad Landžo: g., v.
29 May 1996:	IT-96-22-T Dražen Erdemović: v., c.
26 June 1996:	IT-96-23-I (Foča) Dragan Gagović: g., v., c. Gojko Janković: g., v., c. Janko Janjić: g., v., c. Radomir Kovač: g., v., c. Zoran Vuković: g., v., c Dragan Zelenović: g., v., c. Dragoljub Kunarac: g., v., c. Radovan Stanković: g., v., c.

Annex II

DETAILED SURVEY OF INSTANCES OF FAILURE TO EXECUTE ARREST WARRANTS

The present annex presents a detailed survey of all the arrest warrants that have been addressed to the parties. Where possible, the last known place of residence of the indictee is indicated as well as the action, if any, taken by the party to whom the arrest warrant was served.

Federal Republic of Yugoslavia (Serbia and Montenegro)

IT-94-2-R61 Dragan NIKOLIĆ (indictment confirmed on 4 November 1994; international arrest warrant, 20 October 1995).

Last known place of residence: Vlasenica in the territory of Republika Srpska.

Action taken: none.

IT-95-4-I MEAKIĆ and 18 others a/ (also referred to as Omarska camp case) (indictment confirmed, 13 February 1995; warrant of arrest against Dragomir ŠAPONJA to the Federal Republic of Yugoslavia (Serbia and Montenegro) on 13 February 1995).

Action taken: none.

IT-95-8-I SIKIRICA and 12 others b/ (also referred to Keraterm camp case) (indictment confirmed 21 July 1995; warrant of arrest against Dragomir ŠAPONJA to the Federal Republic of Yugoslavia (Serbia and Montenegro) on 24 July 1995).

Action taken: none.

IT-95-9-I MILJKOVIĆ and 5 others c/ (also referred to as Bošanski Samać case) (indictment confirmed, 21 July 1995; warrants of

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a/ Željko Meakić, Miroslav Kvočka, Dragoljub Prcać, Mladen Radić, Milojica Kos, Momčilo Gruban, Zdravko Govedarica, Gruban, Predrag Kostić, Nedeljko Paspalj, Milan Pavlić, Milutin Popović, Drazenko Predojević, Željko Savić, Mirko Babić, Nikica Janjić, Dušan Knezević, Dragomir Šaponja and Zoran Žigić.

b/ Duško Sikirica, Damir Došen, Dragan Fuštar, Dragan Kulundzija, Nenad Banović, Nikica Janjić, Dušan Knezević, Dragan Kondić, Goran Lajić, Dragomir Šaponja, Zoran Zigić and Nedjeljko Timarac.

c/ Slobodan Miljković, Blagoje Simić, Milan Simić, Miroslav Tadić, Stevan Todorović and Simo Zarić.

arrest to the Federal Republic of Yugoslavia (Serbia and Montenegro) 24 July 1995).

Action taken: none.

IT-95-11-R61 Milan MARTIĆ (indictment confirmed 25 July 1995; warrant of arrest served to the Federal Republic of Yugoslavia (Serbia and Montenegro) on 26 July 1995; advertisement of indictment in accordance with rule 60 served to the Federal Republic of Yugoslavia (Serbia and Montenegro), 23 January 1996; international arrest warrant, 8 March 1996).

Last known place of residence: Banja Luka in the territory of the Republika Srpska.

Action taken: none.

IT-95-13-R61 MRKŠIC, RADIĆ, ŠLJIVANĆANIN (also referred to as Vukovar case) (indictment confirmed on 7 November 1995; warrant of arrest to the Federal Republic of Yugoslavia (Serbia and Montenegro), 8 November 1995; advertisement of indictment in accordance with rule 60 served to the Federal Republic of Yugoslavia (Serbia and Montenegro), 23 January 1996; international arrest warrant, 3 April 1996).

Last known places of residence: Mrkšic in Belgrade, Radić in Cacak, Šljivanćanin in Belgrade.

Action taken: none.

Comment

At the rule 61 hearing of Vukovar, Clint Williamson of the Office of the Prosecutor said that the accused were known to be in the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro) and had not been arrested:

"They have promoted, supported and continued to pay an indicted war criminal, and to maintain him as a senior officer in their army. If these reports are correct, they now even have him training officer cadets. Can there be any more flagrant way of showing their disregard and even contempt for their obligations as a Member State of the United Nations, obligations that (Federal Republic of Yugoslavia (Serbia and Montenegro)) recently reaffirmed by entering into the Dayton Accord? In this case it is very clear that the failure to effect personal service on the accused and to secure their arrests and transfer to The Hague is due solely to the refusal of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the Tribunal as it is required to do" (transcript of rule 61 hearing, 28 March 1996).

In its 3 April 1996 decision, Trial Chamber I certified the failure of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the Tribunal and requested the President to notify the Security Council in accordance with sub-rule 61 (E). The President notified the Security Council on 24 April 1996.

IT-95-5-R61
IT-95-18-R61 Radovan KARADZIĆ and Ratko MLADIĆ (first indictment confirmed, 25 July 1995; warrants of arrest to Federal Republic of Yugoslavia (Serbia and Montenegro) on 26 July 1995. Request for assistance by the Trial Chamber to all States issued 2 August 1995. Second, Srebrenica indictment confirmed on 16 November 1995; warrants of arrest to Federal Republic of Yugoslavia (Serbia and Montenegro), enclosing addresses of KARADZIĆ and MLADIĆ in Belgrade, on 21 November 1995). The rule 61 hearing was held in July 1996 with regard to these two indictees. On 11 July 1996, Trial Chamber I certified the failure of Republika Srpska and the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the Tribunal. The President of the Tribunal so informed the Security Council on the same day.

Action taken: none.

Bosnia and Herzegovina

IT-94-2-R61 Dragan NIKOLIĆ (indictment confirmed, 4 November 1994; warrant of arrest to Bosnia and Herzegovina on 7 November 1994; advertisement of indictment in accordance with rule 60 served to Bosnia and Herzegovina, 13 March 1995; international arrest warrant, 20 October 1995). Trial Chamber I at the Nikolić rule 61 hearing found that the failure to execute the arrest warrant against Nikolić was due to Bosnian Serb authorities and not to Bosnia and Herzegovina.

Last known place of residence: Vlasenica in the territory of Republika Srpska.

Action taken: letter to the Tribunal from the Bosnia and Herzegovina Ministry of Justice dated 15 November 1994 explaining that Bosnia and Herzegovina was unable to execute the arrest warrant "because he (Nikolić) resides at the temporarily occupied territory controlled by aggressors, in fact, in the Municipality of Viasenica region".

Advertisement of indictment against Nikolić advertised by radio and television of Bosnia and Herzegovina on 7 April 1995.

IT-94-3-I Goran BOROVNICA (indictment confirmed, 13 February 1995; warrant of arrest to Bosnia and Herzegovina, 13 February 1995).

Last known place of residence: Kozarac in the Osptina of Prijedor.

Action taken: letter dated 8 March 1995 informing the Tribunal that Bosnia and Herzegovina was unable to execute arrest warrants because the accused "reside(s) in a temporarily occupied territory controlled by the aggressor, i.e., the area of Prijedor municipality".

IT-95-4-I MEAKIĆ and 18 others d/ (also referred to as Omarska camp case) (indictment confirmed, 13 February 1995; warrants of arrest to Bosnia and Herzegovina, on 13 February 1995).

Action taken: letter dated 8 March 1995 informing the Tribunal that Bosnia and Herzegovina was unable to execute arrest warrants because the accused "reside in a temporarily occupied territory controlled by the aggressor, i.e., the area of Prijedor municipality".

IT-95-8-I SIKIRICA and 12 others e/ (also referred to as Keraterm camp case) (indictment confirmed 21 July 1995; warrants of arrest to Bosnia and Herzegovina on 24 July 1995; advertisement of indictment in accordance with rule 60 served to Bosnia and Herzegovina, 23 January 1996).

Action taken: letter from Bosnia and Herzegovina to the Tribunal dated 7 September 1995 informing the Registrar that the Bosnia and Herzegovina authorities had issued warrants to arrest the accused, but had been unable to execute them because the accused "are residing in the temporarily occupied territory controlled by the aggressor".

IT-95-9-I MILJKOVIĆ and 5 others f/ (also referred to as Bošanski Samać case) (indictment confirmed, 21 July 1995; warrants of

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d/ Željko Meakić, Miroslav Kvočka, Dragoljub Prcać, Mladen Radić, Milojica Kos, Momčilo Gruban, Zdravko Govedarica, Gruban, Predrag Kostić, Nedeljko Paspalj, Milan Pavlić, Milutin Popović, Draženko Predojević, Željko Savić, Mirko Babić, Nikica Janjić, Dušan Knežević, Dragomir Šaponja and Zoran Žigić.

e/ Duško Sikirica, Damir Došen, Dragan Fuštarm, Dragan Kulundžija, Nenad Banović, Nikica Janjić, Dušan Knezević, Dragan Kondić, Goran Lajić, Dragomir Šaponja, Zoran Zigić and Nedjeljko Timarac.

f/ Slobodan Miljković, Blagoje Simić, Milan Simić, Miroslav Tadić, Stevan Todorović and Simo Zarić.

arrest to Bosnia and Herzegovina, 24 July 1995; advertisement of indictment in accordance with rule 60 served to Bosnia and Herzegovina, 23 January 1996).

Action taken: letter from Bosnia and Herzegovina to the Tribunal dated 12 February 1996 informing the Registrar that the indictment against these accused had been publicly announced in the media of Bosnia and Herzegovina.

IT-95-10-I JELISIĆ and ČEŠIĆ (also referred to as Brčko case) (indictment confirmed, 21 July 1995; warrants of arrest to Bosnia and Herzegovina, 21 July 1995; advertisement of indictment in accordance with rule 60 served to Bosnia and Herzegovina, 23 January 1996).

Action taken: letter from Bosnia and Herzegovina to the Tribunal dated 12 February 1996 informing the Registrar that indictment against these accused had been publicly announced in the media of Bosnia and Herzegovina.

IT-95-12-R61 Ivica RAJIĆ, also known as "Viktor ANDRIĆ" (also known as the Stupni Do case) (indictment confirmed, 29 August 1995; warrant of arrest to Bosnia and Herzegovina, 29 August 1995; advertisement of indictment in accordance with rule 60 served to Bosnia and Herzegovina, 23 January 1996).

Action taken: on 8 February 1996, the Bosnia and Herzegovina Minister of Justice informed the Registrar that the indictment against Rajić had been advertised on the radio and television of Bosnia and Herzegovina, Independent Radio Studio 99, Independent Television 99, Independent Television Hayat and in Oslobodenje and Avaz, being daily newspapers with a wide circulation in Bosnia and Herzegovina.

IT-95-14-I KORDIĆ and 5 others, g/ including Tihofil BLASKIĆ (also known as Lašva River Valley case) (indictment confirmed on 10 November 1995; warrants of arrest to Bosnia and Herzegovina on 14 November 1995).

Action taken: letter from Bosnia and Herzegovina to the Tribunal dated 29 January 1996 informing the Registrar that the Bosnia and Herzegovina authorities had taken all necessary measures to arrest the accused, but that all accused are in the territory of the Federation of Bosnia and Herzegovina controlled by the Croatian Defence Council, with the exception of Blaskić, who was in the Republic of Croatia.

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g/ Dario Kordić, Tihofil Blaškić, Mario Čerkez, Ivan Santić, Pero Skopljak and Zlatko Aleksovski.

IT-95-15-I Zoran MARINIĆ (indictment confirmed on 10 November 1995; warrant of arrest to Bosnia and Herzegovina on 8 December 1995).

Action taken: none.

IT-95-16-I Zoran KUPREŠKIĆ and others h/ (indictment confirmed on 10 November 1995; warrant of arrest to Bosnia and Herzegovina on 8 December 1995).

Action taken: none.

IT-95-5-R61
IT-95-18-R61 Radovan KARADZIĆ and Ratko MLADIĆ (first indictment confirmed 25 July 1995; warrants of arrest to Bosnia and Herzegovina on 26 July 1995. Request for assistance by Trial Chamber I to all States issued, 2 August 1995. Second, Srebrenica indictment confirmed on 16 November 1995; warrants of arrest to Bosnia and Herzegovina on 21 November 1995).

Action taken: letter from Bosnia and Herzegovina to the Tribunal dated 7 September 1995 informing the Registrar that the Bosnia and Herzegovina authorities had issued warrants to arrest the accused, but had been unable to execute them because the accused "are residing in the temporarily occupied territory controlled by the aggressor and are therefore beyond the reach of the legitimate authorities of the Republic of Bosnia and Herzegovina".

IT-95-21-T DELALIĆ, DELIĆ, MUCIĆ and LANDZO (also referred to as Celebići camp case) (indictment confirmed on 21 March 1996; 2 warrants of arrest to Bosnia and Herzegovina (Delić and Landzo), on 21 March 1996).

Action taken: Delić and Landzo have been arrested by the Bosnia and Herzegovina authorities and transferred to the Tribunal.

IT-96-23-I Dragan GAGOVIĆ and others i/ (Foča) (indictment confirmed, 26 June 1996; warrants of arrest to Bosnia and Herzegovina, Republika Srpska and the Federation of Bosnia and Herzegovina, 27 June 1996).

Action taken: none to date.

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h/ Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Vladimir Santić, Stipo Alilović, Drago Josipović, Marinko Katava and Dragan Papić.

i/ Dragan Gagović, Gojko Janković, Janko Janjić, Radomir Kovać, Zoran Vuković, Dragan Zelenović, Dragoljub Kunarac, Radovan Stanković.

Federation of Bosnia and Herzegovina

IT-95-12-R61 Ivica RAJIĆ, otherwise known as "Viktor ANDRIĆ" (also known as the Stupni Do case) (indictment confirmed, 29 August 1995; warrant of arrest to the Federation of Bosnia and Herzegovina, 29 August 1995; advertisement of indictment in accordance with rule 60 served to the Federation of Bosnia and Herzegovina, 23 January 1996).

Action taken: none.

Rajić was in the custody of the Federation of Bosnia and Herzegovina in Mostar at the time the indictment was confirmed (see paragraph 7 of the indictment dated 23 August 1995) and at the time of the issuance of the arrest warrant. According to the Prosecutor, Rajić was tried, acquitted and released. At the rule 61 hearing, the Prosecutor added that Rajić was reported to be in Kiseljak last January. The Bosnian Ministry of Interior provided the Prosecutor with information according to which Rajić had moved to Mostar. It now appears that he could be living in the Republic of Croatia (see rule 61 hearing transcripts, 2 April 1996, pp. 152-153).

IT-95-14-I KORDIĆ and 5 others, j/ including Tihofil BLASKIĆ (also known as Lašva River Valley case) (indictment confirmed on 10 November 1995; warrants of arrest to the Federation of Bosnia and Herzegovina on 14 November 1995).

Action taken: none.

IT-96-23-I Dragan GAGOVIĆ and others k/ (Foča) (indictment confirmed, 26 June 1996; warrants of arrest to Bosnia and Herzegovina, Republika Srpska and the Federation of Bosnia and Herzegovina, 27 June 1996).

Action taken: none to date.

Republika Srpska

IT-94-2-R61 Dragan NIKOLIĆ (indictment confirmed, 4 November 1994; warrant of arrest to Bosnian Serb authorities on 7 November 1994; international arrest warrant, 20 October 1995).

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j/ Dario Kordić, Tihofil Blaškić, Mario Čerkez, Ivan Santić, Pero Skopljak and Zlatko Aleksovski.

k/ Dragan Gagović, Gojko Janković, Janko Janjić, Radomir Kovač, Zoran Vuković, Dragan Zelenović, Dragoljub Kunarac, Radovan Stanković.

Last known place of residence: Vlasenica in the territory of Republika Srpska.

Action taken: none.

IT-94-3-I Goran BOROVNICA (indictment confirmed, 13 February 1995; warrant of arrest to Republika Srpska, 13 February 1995).

Last known place of residence: Kozarac in the Osptina of Prijedor.

Action taken: none.

IT-95-4-I MEAKIĆ and 18 others l/ (also referred to as Omarska camp case) (indictment confirmed, 13 February 1995; warrants of arrest to Bosnian Serb authorities on 13 February 1996).

Action taken: none.

IT-95-8-I SIKIRICA and 12 others m/ (also referred to as Keraterm camp case) (indictment confirmed 21 July 1995; warrant of arrest to Bosnian Serb authorities on 24 July 1995; advertisement of indictment in accordance with rule 60 served to Bosnian Serb authorities, 23 January 1996).

Action taken: none.

IT-95-9-I MILJKOVIĆ and 5 others n/ (also referred to as Bošanski Samać case) (indictment confirmed, 21 July 1995; warrants of arrest to Bosnian Serb authorities, 24 July 1995; advertisement of indictment in accordance with rule 60 served to Bosnian Serb authorities, 23 January 1996).

Action taken: none.

Last known place of residence: Miljković is reported to be in Kragujevac, awaiting trial on multiple racketeering and other charges.

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l/ Željko Meakić, Miroslav Kvočka, Dragoljub Prcać, Mladen Radić, Milojica Kos, Momčilo Gruban, Zdravko Govedarica, Gruban, Predrag Kostić, Nedeljko Paspalj, Milan Pavlić, Milutin Popović, Draženko Predojević, Željko Savić, Mirko Babić Nikica Janjić, Dušan Knežević, Dragomir Šaponja and Zoran Zigić.

m/ Duško Sikirica, Damir Došen, Dragan Fuštar, Dragan Kulundzija, Nenad Banović, Nikica Janjić, Dušan Knezević, Dragan Kondić, Goran Lajić, Dragomir Šaponja, Zoran Zigić and Nedjeljko Timarac.

n/ Slobodan Miljković, Blagoje Simić, Milan Simić, Miroslav Tadić, Stevan Todorović and Simo Zarić.

IT-95-10-I JELISIĆ and ČEŠIĆ (also referred to as Brčko case) (indictment confirmed, 21 July 1995; warrants of arrest to Bosnian Serb authorities, 21 July 1995; advertisement of indictment in accordance with rule 60 served to Bosnian Serb authorities, 23 January 1996).

Action taken: none.

IT-95-5-R61
IT-95-18-R61 Radovan KARADŽIĆ and Ratko MLADIĆ (first indictment confirmed, 25 July 1995; warrants of arrest to Bosnian Serb authorities on 26 July 1995. Request for assistance by the Trial Chamber to all States issued, 2 August 1995. Second, Srebrenica indictment confirmed on 16 November 1995; warrants of arrest to Bosnian Serb authorities on 21 November 1995). The rule 61 hearing was held in July 1996 with regard to these two indictees. On 11 July 1996, Trial Chamber I certified the failure of Republika Srpska and the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the Tribunal. The President of the Tribunal so informed the Security Council on the same day.

Action taken: none.

IT-96-23-I Dragan GAGOVIĆ and others o/ (Foča) (indictment confirmed, 26 June 1996; warrants of arrest to Bosnia and Herzegovina, Republika Srpska and the Federation of Bosnia and Herzegovina, 27 June 1996).

Action taken: none to date.

Republic of Croatia

IT-95-12-R61 Ivica RAJIĆ, also known as "Viktor ANDRIĆ" (also known as the Stupni Do case) (indictment confirmed, 29 August 1995; warrant of arrest to the Republic of Croatia, 8 December 1995; advertisement of indictment in accordance with rule 60 served to the Republic of Croatia, 23 January 1996).

Last known place of residence: Kiseljak, in Bosnian Croat-controlled territory.

Action taken: none.

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o/ Dragan Gagović, Gojko Janković, Janko Janjić, Radomir Kovač, Zoran Vuković, Dragan Zelenović, Dragoljub Kunarac, Radovan Stanković.

IT-95-14-I KORDIĆ and 5 others, p/ including Tihofil BLASKIĆ (also known as Lašva River Valley case) (indictment confirmed on 10 November 1995; warrants of arrest to the Republic of Croatia on 14 November 1995).

Action taken: Zlatko Aleksovski has been arrested in Split, on 8 June 1996. He is due to be transferred to The Hague.

Mention should, however, be made of the voluntary surrender of Mr. Blaškić on 1 April 1996. According to the Prosecutor, the arrival of Mr. Blaškić in The Hague is the result of a number of discussions with the Croatian Government, which has been cooperative in reaching a compromise regarding the voluntary surrender of the accused.

There are reports that two Bosnian Croats accused in the Lašva River Valley indictment, Pero Skopljak and Ivan Santić, as well as Ivica Rajić, accused in the Stupni Do indictment, are being kept under house arrest in the Duilovo Holiday Resort near Split, Croatia, by the Croatian authorities. It has also been alleged that Dario Kordić continues to reside in a government-owned flat in Zagreb, and regularly attends Croatian Democratic Union meetings where top government officials are present; according to other reports, he has been seen on Croatian-controlled television (HRTV). In response to a letter of 11 July 1996 from the Tribunal's President to the President of the Republic of Croatia, inquiring about the veracity of these allegations concerning Kordić, in a letter of 18 July 1996, the Deputy Foreign Minister of the Republic of Croatia averred that if the Croatian authorities had "had reliable information about the alleged presence of Mr. Kordić on the territory of the Republic of Croatia they would certainly have taken the appropriate steps according to law".

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p/ Dario Kordić, Tihofil Blaškić, Mario Čerkez, Ivan Santić, Pero Skopljak and Zlatko Aleksovski.